(1)
Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

L. H. SHIEH,

Petitioner,

vs.

THE SUPREME COURT OF CALIFORNIA, AND THE STATE BAR COURT OF THE STATE BAR OF CALIFORNIA,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of California And The State Bar Court Of The State Bar Of California

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner was disbarred by the Respondents the Supreme Court of California and the State Bar of California, after the action was removed to the federal courts and is still pending in the federal courts, through Respondents' (1) perjured declarations that Petitioner was served in Taipei, Taiwan, Republic of China, by certified mail return receipt requested, while the State Bar of California admitted that the United States Postal Office prohibited all certified mail return receipts requested from sending outside the United States, and that no certified mail return receipts were ever returned to senders (the State Bar of California and its State Bar Court); (2) destruction of virtually all of petitioner's filings, and consistent refusals to review any of petitioner's pleadings filed in response to the action; (3) use of forged and perjured documents as sole evidence and the denial of discovery on the issue of service; (4) definition of an "attorney" to include a "party" represented by lawyers, (5) consistent refusals to serve Petitioner by air mail with sufficient postage and with sufficient time to respond, and (6) deceitful and corrupt contents of the default judgments.

1. Do the above actions of the Respondents violate the requirements of the taking, due process and equal protection clauses of the Amendments to the United States Constitution, and the Treaty of Friendship, Commerce And Navigation Between the Republic of China and the United States?

2. Do Respondents have jurisdiction over Petitioner after the removal of this Action to the federal courts, and does the Supreme Court of California have jurisdiction to

QUESTIONS PRESENTED – Continued

disbar Petitioner on April 2, 1997, (1) when the motions to vacate improperly entered default judgment and default, and motion for reconsideration of the default judgment was filed on October 21, 1996, where the default was reopened through the amended notice to show cause filed by the State Bar of California on May 1, 1996, are still pending before the Hearing Department, and Petitioner has not exhausted the Reviewing Department of the State Bar Court of the State Bar of California and (2) after the United States District Court for the District of Columbia entered defaults against Respondents on December 7, 1996 for declaratory and injunctive relief and for setting aside the default and default judgment in this Action?

3. Do Respondents violate Petitioner's due process right to have neutral and detached judges who are free from criminal and unethical misconduct to determine his case as protected by the Constitution of the United States of America and by the Treaty of Friendship, Commerce And Navigation Between the Republic of China and the United States?

4. Are Rules 60(b), 101(b)(4), 200(a)(4), (b) & (c), 461(e) and 462 of the Rules of Procedures of the State Bar of California and §§ 6007(c) and 6068 the State Bar Act, also known as Business And Professions Code, relied upon by the Respondents, as applied to Petitioner in Taipei, constitutional and consistent with the requirements of the Treaty of Friendship, Commerce And Navigation Between the Republic of China and the United States?

QUESTIONS PRESENTED – Continued

5. Is the term "attorney" under Section 6068 of the State Bar Act of the State Bar of California, which was specifically made applicable by the Respondents to a "party," who is represented by lawyers, because of his race, color, national origin and religion, vague, ovebroad, overincluded and discriminatory as applied to petitioner as a class of one and violate the Treaty of Friendship, Commerce and Navigation between the Republic of China and the United States of America and thus is unconstitutional?

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OPINION BELOW

The opinion of the Supreme Court of California was not reported. App. 1. The Reviewing Department of the State Bar Court of the State Bar of California ("RD") has no ruling and no opinion since the Hearing Department of the State Bar Court of the State Bar of California ("HD") has not ruled on Petitioner's Motion To Vacate Improperly Entered Default and Default Judgment Of October 10, 1996, Motion for Reconsideration of HD's default judgment and Motion To Dismiss Or To Stay, since October 21, 1996. The opinion of the HD on the default judgment was not reported. App. 7.

JURISDICTION

The decision of the Supreme Court of California was filed on April 2, 1997. This Court's jurisdiction is invoked under Title 28, U.S.C. §§ 1257, and under the Rules of the Supreme Court of the United States ("USSC"), Rules 10(b) & (c), and 13.1.

CONSTITUTIONAL PROVISIONS, TREATY AND RULES INVOLVED

1. Amendments VI, and XIV to, and Article VI, Section II of, the United States Constitution are set forth in App. 47, D.

2. The Treaty of Friendship, Commerce and Navigation Between the Republic of China and the United States of America are set forth in App. 47, F.

3. The California Constitution, Art. VI, § 11, is set forth in App. 47, E.

4. Law Governing Extension of Assistance To Foreign Court is set forth in App. 49, G.

5. The State Bar Act is set forth in App. 50, H.

6. The Rules of Procedure of the State Bar of California is set forth in App. 52, I.

STATEMENT OF CASE[1]

Petitioner was disbarred by Respondents (1) without service of investigation, application for inactive enrollment, Notice To Show Cause, motion for entry of default and notice of default by certified mail return receipts requested upon Petitioner in Taipei pursuant to Rules 60(b), 200(b) & (c), and 461(e) et al. of the Rules of Procedure of the State Bar of California ("RP"), (2) without a hearing, (3) without a trial, (4) without a meaningful opportunity to litigate and (5) without neutral and

[1] All volume and page numbers of the excerpts of record ("ER") referred to herein are the volume and page numbers of the ER filed in *Shieh v. Gilbert, the State Bar of California, the Supreme Court of California, the Court of Appeal of California, the Superior Court of California, et al.*, CV-96-2530 CKK [previously RCL] pending before the United States District Court for the District of Columbia (hereinafter cited as "DC Action"). The same ER filed in the DC Action were also filed with the Respondents. Respondents have wilfully destroyed or concealed all ER filed by Petitioner. This Court is requested to take judicial notice of the existence of the ER, fact and law filed in that court.

detached judges, because of Petitioner's race, color, national origin and religion, and because of the criminal conspiracy to commit criminal RICO, anti-trust, and unfair competition by the Respondents and their conspirators.

In a group conspiracy among the employees of Respondents, the Supreme Court of California ("SCC"), and the State Bar of California ("SBC"), and large and powerful Caucasian law firms, led by William F. Highberger to take away and to destroy all of Petitioner's several billion dollars business and clients, the SBC commenced the alleged disciplinary actions against Petitioner when Petitioner was in Taipei at all time relevant to this action.

As Highberger admitted: "We have the name of the person in the Office of Trial Counsel who is working on the preparation of the case . . . It's moving with all deliberate speed[2]."

Pursuant to the SBC regulations, the Office of Investigation of the SBC must serve Petitioner in Taipei with the alleged facts and evidence for discipline, and must conduct an investigation before filing a notice to show cause ("NTSC") by the Office of Chief Trial Counsel ("OCTC") of the SBC. No service of investigation from the Office of Investigation of the SBC was made upon petitioner in Taipei and no investigation was made by SBC.

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[2] See *Highberger, Kakita, Spencer & Turner MAF Corp., et al. v. Highberger, Castellano, Hollingsworth, et al.*, United States Bankruptcy Court for the Central District of California ("USBC"), LA94-21873-BR, November 29, 1994, Transcript of Proceeding ("TP"), at 7, lines 12-14, 19-20.

Pursuant to Rules of Procedure of the SBC ("RP") Rules 60(b), 200(b) & (c), and 461(e), the service of application for inactive enrollment, the service of the NTSC, the service of "the motion for entry of default" and the service of "the notice of entry of default" on the petitioner "*shall* be made by certified mail, return receipt requested." App. 52, I. As admitted by SBC, no certified mail return receipt requested was ever made upon Petitioner in Taipei.

Cydney Batchelor of the Office of the OCTC admitted that "the green return receipt requested card was *never* returned to OCTC[3]." In the overseas telephone conversation between the Howard Wistrich, the Manager of the State Bar Court of the SBC ("BC") and Petitioner, where the telephone conversation was tape recorded, Mr. Wistrich admitted on or about August 9, 1996 that (1) he had checked with the United Stated Postal Office and confirmed that "certified mail return receipt requested" is *prohibited* from sending outside the United States, (2) he had checked the petitioner's two actions, 93-0-14106 ("this Action") and 95-TE-10040 ("TE Action"), *no* certified mail return receipt has ever returned to BC and there was no record of the existence of the certified mail return receipt, and (3) no decision on the motion to dismiss and to stay filed by Petitioner was ever made between March 20, 1995, the date Petitioner filed the motion to dismiss and to stay and the removal action, and April 18, 1995, the date the default on this Action was entered, and April

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[3] See "Office of The Chief Trial Counsel's Motion To Strike Respondent's Motion For Reconsideration . . . And Opposition", dated February 26, 1996, at 5, lines 13-14.

21, 1995, the date the default judgment for the involuntary inactive enrollment was entered in TE Action. DC Action 1 ER 133.

When Petitioner was informed through other sources that OCTC and HD[4] were conspiring with Highberger to enter default against Petitioner, Petitioner, on March 20, 1995, filed a (1) motion to dismiss[5], and motion to stay[6], and (2) a removal, among other papers, with the HD and the United States District Court for the Central District of California.

Judge Robbins of HD admitted that "A few minutes before the scheduled hearing on March 20, 1995, the Court received a letter and several pleadings [motion to dismiss and stay, removal, et al.] from Respondent [Petitioner]. These were not filed or entered into evidence,[7]"

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[4] Notwithstanding the facts that Steedman of OCTC and Robbins of BC admitted in the ex parte communications that Petitioner did not receive any of the certified mail return receipt requested, as such method of service is prohibited by the U.S. Post Office.

[5] For lack of subject matter jurisdiction, lack of service, forum non conveniens, and other grounds.

[6] Pending upon resolutions of the criminal indictments, criminal prosecutions, as well as civil actions against Cydney Batchelor, and Steedman of OCTC, and Highberger, Castellano, et al. for perjury, forgery, corruption, collusion, and obstruction of justice, et al., because all documents submitted to the BC are forged and perjured. The Taiwan Court of Appeal, by 85 [1996] Writ nos. 2054 and 3338, had issued final and non-appealable orders prohibiting the BC and CSC, et al. from using or revealing such documents and information.

[7] See Judge Robbins' default judgment in 95-TE-10040-JER, dated April 21, 1995, at 4, lines 16-18. A copy of it is attached to

but were destroyed by Judge Robbins. A default in this action was entered on April 18, 1995, without "service of the entry of default on" Petitioner by certified mail return receipt requested. RP, Rule 200(c). App. 51, H. A default judgment for inactive enrollment was entered on April 21, 1995. Before such default judgment, HD wilfully and maliciously refused to send a letter "again warning the member of the consequences of failing to file an answer", and to give Petitioner 15 days to file an answer. The State Bar Act § 6007(e)(1)(C). App. 52, I.

Motions to vacate defaults and default judgments were filed with HD at the end of April and earlier May, 1995 in this Action and in TE Action. Pursuant to RP Rule 203(e), "[a] motion to set aside or vacate default shall be decided on an *expedited* basis." BC wilfully and intentionally refused to rule upon any of the motions for approximately one year so as to destroy Petitioner's law practice as a California lawyer. Many other pleadings were destroyed and concealed by Hearing Department ("HD") and Reviewing Department ("RD") of BC.

In 1996, Judge Obrien of the RD prohibited petitioner from filing any and all papers with either HD or RD and effectively deprived all of Petitioner's constitutional and FCN Treaty rights to respond. Judge Obrien instructed

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DC Action, 1 ER 82. Please note that virtually all, if not all, filings of Petitioner with the BC and CSC were destroyed and/or concealed by BC and CSC through their conspiracy with Highberger. The Federal Express Company could prove the filings, which were received and signed by the clerks of the BC and CSC. Accordingly, those who are involved in the destruction of the petitioner's filings were indicted.

clerks of the HD and RD not to file any and all of petitioner's pleadings by destroying and/or concealing them. Judge Obrien's criminal intent was to cover up the over 100 perjured declarations filed under his instructions and conspiracy, and over five criminal indictments and criminal prosecutions against him and his conspirators.

On or about May 1, 1996, Batchelor and Steedman of OCTC amended the NTSC and reopened the default. DC Action, App. 10. The amended NTSC was never served upon Petitioner in Taipei. Nevertheless, on October 10, 1996, Judge Brott of HD entered default judgment and recommended to disbar Petitioner. App. 7.

On or about October 21, 1996, Petitioner filed, through the Federal Express Company, (1) the "Motions To Vacate Improperly Entered Default Judgment and Default, Motion For Reconsideration of the October 10, 1996; Motion To Dismiss or to Stay" and (2) "Sixth Verified Proposed Response" (collectively "Motions And Response") with HD. DC Action, 1 ER 153. As of today, no decision was made by HD.

Pursuant to California Rule of Court § 952(e) and other provisions, the Respondent SCC has no subject matter jurisdiction to disbar Petitioner until and unless the "review within the State Bar Court has been exhausted." In other words, the sequences are: (1) the HD must make decision upon Petitioner's Motions And Response first, (2) Petitioner must then file a "request for review" with the RD pursuant to RP, Rule 301, if HD denied the Motions And Response, and (3) RD must

review and "shall decide matters before it in bank" pursuant to RP Rule 305(c). All of the above three procedures were not followed by the HD and RD. The Respondent SCC has no subject matter jurisdiction to disbar petitioner.

The decisions of Respondents conflict with all decisions of all state courts of last resort, of the United States Court of Appeals and of this Court. Pursuant to the constitutions of all states and of the United States, including the State of California, Art. VI, § 11, which reads as follows: "[t]he Supreme Court has appellate jurisdiction" and has no original jurisdiction. App. 47, E.

In retaliating Petitioner's filing and serving of the DC Action against Respondents for declaratory and injunctive relief, and the criminal indictments and criminal prosecutions filed in the Criminal Court and the Offices of Prosecutors, the HD filed the "Transmittal of State Bar Court Recommendation [of October 10, 1996]" with Respondent SCC, dated November 11, 1996. App. 2. Petitioner filed an opposition to that Transmittal because the HD and RD have not reviewed the Motions And Response as well as the request for review, as described above.

CSC refused to file any and all of Petitioner's pleadings, except the opposition. After the SBC filed an answer to Petitioner's Opposition, Petitioner filed a verified reply brief with the CSC on or about February 24, 1997. The verified reply brief was destroyed or concealed by SCC and was never filed or considered. On or about December 7, 1996, the United States District Court for the

District of Columbia entered defaults against Respondents for declaratory and injunctive relief and for setting aside the default and default judgment in this Action. On April 2, 1997, the SCC disbarred Petitioner.

Except the facts set forth in this Petition, all statements made by Judges Brott and Robins of Respondents SBC and by judges of SCC are false and malicious. They were indicted for forgery, perjury, obstruction of justice, and corruption, among other felonies. *See Republic of China v. Robbins, Brott, Highberger, Castellano, et al.*, 86 [1997] Indictment no. 110.

REASONS FOR GRANTING WRIT

I THIS CASE PRESENTS AN IMPORTANT QUESTION AS TO WHETHER JUDICIAL DETERMINATIONS OF DISBARMENT ARE SUBJECT TO DUE PROCESS AND EQUAL PROTECTION CLAUSES AND THE TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE REPUBLIC OF CHINA AND THE UNITED STATES

A. RULES 60(b), 200(b) & (c), AND 461(e) OF RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA ARE UNCONSTITUTIONAL AND CONFLICT WITH PUBLISHED DECISIONS OF THIS COURT, UNITED STATES COURTS OF APPEALS, AND CALIFORNIA

The only method of service upon Petitioner in Taipei provided by the Rules 60(b), 200(b) & (c), and 461(e) of the Rules of Procedures of the State Bar of California ("RP") is: it "shall be made by certified mail, return receipt requested". Certified mail is prohibited from

sending outside the United States and from serving upon Petitioner in Taipei, as admitted by the SBC. Such provisions allow SBC to commit perjury and to deprive Petitioner due process and equal protection rights to fair notice, fair hearing, fair trial and fair opportunity to litigate.

Secondly, certified mail service violates the Hague Conventions ("HC"), the Guidelines of the State Department ("Guidelines") and the Law Governing Extension of Assistance To Foreign Court ("Assistance"), as mandated by the Second And Seventh Circuits.

Due process of law requires that Petitioner be afforded "notice" of proceedings involving his interests and an "opportunity" to be heard. Basically, this requires " . . . notice reasonably calculated, under all the circumstances, to appraise interested parties of pendency of the action and afford them opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314, and *Mennonite Board of Missions v. Adams* (1983) 462 U.S. 791.

Under the doctrine of international comity, the sovereign act of an independent country must be respected and cannot be questioned in a state court. *Banco National de Cuba v. Sabbatino, et al.* (1963) 376 U.S. 398, 84 S.Ct. 923.

The Respondents not only wilfully and criminally violate Petitioner's right under due process, equal protection and FCN Treaty, but violate the principals of Act of State Doctrines and Foreign Sovereignty by refusing to comply with even the Assistance.

In *Societe Nationale Industrielle Aerospatiale v. United States Dist. Ct.*, (1987) 482 U.S. 522, 543, 107 S. Ct. 2542, 2555-2556 and *In Re Anschuetz & Co.* (5th Cir. 1988) 838 F.2d 1362, 1364, the courts held that "Special concern must be given to" "the demand of international comity." "[I]nternational comity requires American courts to exercise 'special vigilance' . . . American courts must give 'most careful consideration' to the policies and interests of whatever country is involved, and to any problem confronted by the foreign litigant."

The principle of international comity requires that Respondents recognize the necessity that litigants in the United States who are seeking to serve persons and entities located in foreign countries must comply with the law of the foreign country, in this case, the ROC. *Compagnie Francaise D'Assurance Pour Le Commerce Exteriur v. Phillips Petroleum Company* 105 F.R.D. 16, 28-29 (S.D.N.Y. 1984) ("American courts should refrain, whenever it is feasible, from ordering a person to engage in activities that would violate the laws of a foreign nation").

The Supreme Court of the United States has long time established the principle that the structures of the Due Process Clauses forbid a state court to exercise personal jurisdiction over a foreign litigant under circumstances that would offend "traditional notions of fair play and substantive justice". One of the fair play and substantive justice under Due Process Clause is to give the party a fair notice and due day in the court. *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316, 66 S.Ct. 154, 158; *Asahi Metal Industry Co., Ltd. v. Superior Court* (1987) 480 U.S. 102, 107 S.Ct. 1026.

The issue of the status of Taiwan for the purpose of service and discovery has not been, and should be, settled by this Court. No court in the United States knows exactly what law should be applied to serve residents in Taiwan and to conduct discovery upon them. Two published decisions of the Second and Seventh Circuits, a published decision of California, a non-published decision of the Ninth Circuit, and the provisions of the Federal Rules of Civil Procedure present conflicts.

No matter what the status of Taiwan might be, a part of the People's Republic of China ("PRC"), a part of the Republic of China ("ROC") or an independent country from PRC and ROC, the following results are always the same: all service and discovery must be translated into Mandarin Chinese and made through the diplomatic channel. The only difference are: which law, treaty, or convention should apply and govern, which language (simplified or traditional Mandarin Chinese, or Taiwanese) should be used, and which diplomatic channel should be gone through, PRC, ROC, or Taiwan.

If Taiwan is part of PRC, a simplified Mandarin Chinese translation must be served. If Taiwan is part of ROC, a traditional Mandarin Chinese translation must be attached. If, however, Taiwan is an independent country, a Taiwanese (Fujianese) translation must be attached. The Respondents have complied with nothing.

1. California Case

"[A]t a minimum a defendant should be informed *in the language of the jurisdiction in which he is served* . . . that a

legal action of a specific nature is pending against him at a particular time and place." *Julen v. Larson*, 25 Cal. App. 3d 325, 328, 101 Cal. Rptr. 796, 798 (1972). This translation requirement is applicable to Petitioner residing in Taipei, regardless of the status of Taiwan.

2. Seventh Circuit Case – Taiwan Is Part of People's Republic of China

In *Atlantic Mutual Insurance Co. v. Northwest Airlines*, 796 F.Supp. 1188, 1191 (E.D. Wis. 1992), the court held that Taiwan was bound by the Warsaw Convention even though it did not sign that document because Taiwan is part of the People's Republic of China ("PRC") and PRC was a member of that convention. For the same reason, the Respondents shall serve Petitioner pursuant to the Hague Convention ("HC").

The Seventh Circuit held that "the status of Taiwan and the meaning of the Taiwan Relations Act. . . . is open to decision in a case where it matters to the outcome." *Atlantic Mutual Insurance Co. v. Northwest Airlines*, 24 F.3d 958, 962 (1994).

"By virtue of the Supremacy Clause, U.S. Const., Art. VI, the Convention preempts inconsistent methods of service prescribed by state law in all cases to which it applies." *Volkswagenwerk Aktiengesellschaft v. Schlunk* (1988) 486 U.S. 694, 108 S. Ct. 2104. "The Hague Convention provisions are mandatory, so that failure to comply voids the attempted service." *Id.*, 486 U.S. at 698, 108 S.Ct. 2108.

Failure to comply with the Hague Convention ("HC") procedures void the service, even though it was made in compliance with the state law, and even though the Petitioner has actual notice of the lawsuit. *Dr. Ing. H.C.F. Porsche, A.G. v. Sup. Ct.* (1981) 123 CA3d 755, 177 CR 155.

As summarized by the Supreme Court, the Hague Service Convention has been interpreted to

> require [ ] each [nation] to establish a central authority to receive requests for service of documents from other countries. U.S.T. 362, T.I.A.S. 6638, Art. 2. Once a central authority receives a request in the proper form, it must serve the documents by a method prescribed by the internal law of the receiving state or by a method designated by the requester and compatible with that law. Art. 5. The central authority must then provide a certificate of service that conforms to a specified model. Art. 6.–

Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. at 698-699.

Respondents' circumvention of the procedures for service of process mandated by the Hague Convention constitutes "contumacious conduct by the[m]" and therefore their NTSC and Application For Inactive Enrollment ("AIE") should be dismissed with prejudice for defective service of process. *Gaspard v. United States*, 713 F.2d 1097, 1105-1106, fn. 20 (5th Cir. 1983).

3. Second And Ninth Circuits – Taiwan is Part of Republic of China

In *New York Chinese TV Programs, Inc. v. U.E. Enterprises, Inc.*, 954 F.2d 847, 852 (2d Cir., 1992), the court recognized the Republic of China and the Treaty of Friendship, Commerce And Navigation Between the Republic of China and the United States of America ("FCN Treaty") is still "a valid and enforceable treaty" binding upon the United States of America ("USA").

The FCN Treaty, as a Supremacy Law of Land, mandates the USA to let the nationals of the ROC *not* to "receive treatment with respect to such rights and privileges less favorable than the treatment which is or may hereafter be accorded to the nationals of any third party." Article II, Section 3. App. 48

Petitioner must be treated no less favorable than any third party, which is a member of the HC. Thus, FCN Treaty mandates the result of application of the HC. The FCN Treaty requires ROC and the United States to guarantee privileges of their own laws to citizens of the other nation and was held to be enforceable despite the United States' recognition of PRC. *N.Y. Chinese TV Programs, supra*, 954 F.2d at 852.

In *Chu v. Republic of China, et al.* 93-15537 (July 29, 1994, 9th Cir.), the Ninth Circuit held that the Republic of China ("ROC") is an independent country and enjoys the protection of the Foreign Sovereign Immunity Act, and that the ROC and its branches, Executive Yuan, and Taiwan Provincial Government, and its government owned company, Taiwan Tobacco & Wine Monopoly Bureau

("TTWMB") are immune from lawsuits in the United States. This case was not reported.

Recognition of the ROC in 1994 has the same meaning and effect as the recognition of the FCN Treaty by the Second Circuit in *New York TV* case. HC is thus applicable to both Respondents.

Respondents did not comply with HC or letter rogatory.

USA and Respondents estopped from claiming that ROC or Taiwan is *not* signatory of the HC. Both Taiwan and ROC were willing and ready to join the HC. But, the USA prohibited them from joining. In part, the USA refused to recognize either ROC or Taiwan. Now, USA cannot profit from its unclean hand and waiver. HC is applicable to service in the ROC or Taiwan.

4. If Taiwan Is Not Part of People's Republic of China or Republic of China, But An Independent Country

The United States State Department announced the "Guidelines," which requires that all services must comply with the "Law Governing Extension of Assistance to the Foreign Court of the Republic of China" ("Assistance"), which is in the essence the same as the HC. App. 49, G. There is a Central Authority ("CA") in Taiwan, as well, to accept and effect the service of summons and complaint and the service of discovery.

The Assistance mandates that Respondents serve Petitioner through diplomatic channels with "true Chinese translation." *See* Art. 3 & 7 of Assistance, in App. 49,

G. Respondents did not go through any diplomatic channels in Taiwan, did not translate into Chinese, and the attempted service is not effective on Petitioner. App. 1, 5, 45-46.

5. Federal Rules of Civil Procedure

FRCP Rule 4(f) provides as follow:

> **"(f) Service Upon Individuals in a Foreign Country.**
>
> Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:
>
> (1) by any *internationally agreed means* reasonably calculated to give notice, such as those means authorized by the *Hague Convention* on the Service Abroad of Judicial and Extrajudicial Documents; or
>
> (2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:
>
> (A) *in the manner prescribed by the law of the foreign country* for service in that country in an action in any of its courts of general jurisdiction; or
>
> (B) as directed by the foreign authority in response to a *letter rogatory or letter of request*".

Respondents have complied with nothing.

B. RESPONDENTS' EXERCISE OF JURISDICTION AFTER REMOVAL, AND REFUSAL TO VACATE DEFAULT AND DEFAULT JUDGMENT WHEN DEFAULT SHOULD HAVE NOT BEEN ENTERED AND AFTER THE DEFAULT WAS REOPENED CONFLICT WITH ALL DECISIONS OF ALL COURTS IN THIS NATION

On March 20, 1995, Petitioner removed this Action and TE Action to the federal courts, and filed motions to dismiss and stay. The removals of this Action and TE Action are still pending in the federal courts as of today.

Filing the removal notice in the federal courts ousted Respondents' jurisdiction. 28 U.S.C. § 1447(d) & (e), *Murray v. Ford Motor Co.* (5th Cir., 1985) 770 F.2d 461. Thus, any later Respondents' action is void, even if the removal is ultimately held improper. *Allstate Ins. Co. v. Sup. Ct.* (1982) 132 CA3d 670, 676, 183 CR 330.

Since the removals were timely, the federal court, including this Court, has jurisdiction to vacate default judgment entered by the Respondents. *Beighly v. FDIC* (5th Cir., 1989) 868 F.2d 776, 780; *Butner v. Neustadter* (9th Cir., 1963) 324 F.2d 783, 785.

Pursuant to California Constitution Art. VI, § 11, California Rules of Court § 952(e), and RP, Rule 311, Respondent SCC has no jurisdiction to disbar Petitioner because the Motion To Vacate Default and Default Judgment and Motion For Reconsideration are still pending before the HD of Respondent SBC. App. 47, G.

The OCTC of the SBC amended the NTSC substantially, as admitted by HD of SBC: "The State Bar also

submitted additional documentary evidence, to which Respondent is deemed to have waived any objection . . . The Court bases its findings of fact on both the deemed admissions and the additional evidence submitted." App. 10. Such amendment of NTSC, without serving upon Petitioner pursuant to RP, Rule 60(b), reopened the default, even assuming that the default was properly entered. *Engebretson & Co., Inc. v. Harrison* (1981) 125 CA3d 436, 178 CR 77; *Jackson v. Bank of America* (1986) 188 CA3d 375, 233 CR 162.

C. RESPONDENTS' ENTRY OF DEFAULT AND DEFAULT JUDGMENT WHEN THE MOTION TO DISMISS AND TO STAY WERE PENDING BEFORE THEM CONFLICT WITH ALL DECISIONS OF ALL COURTS IN THIS NATION

Even assuming that the federal courts remanded this action to Respondents, since Petitioner filed (1) the motion to dismiss and to stay with the federal courts and with the Respondents, and (2) the appeals and petitions for certiorari with the federal courts, no default and default judgment shall be entered. *Armentor v. General Motors Corp.* 399 So. 2d 811, 812-813 (Court of Appeal of Louisiana, Third circuit, May 27, 1981) (holding that "it would recognize the answer GMC filed in federal court"); *Reyes v. Marine Management & Consulting*, 544 So. 2d 1259, 1260 (Court of Appeal of Louisiana, Fourth circuit, May 25, 1989) (holding that "Relators each filed a responsive pleading coupled with a special defense of lack of personal jurisdiction pursuant to Rule 12(b) of the Federal Rules of Civil Procedure . . . A party who properly avails himself of such a procedural device while his case is

pending in federal court should not be penalized upon remand to the state court because of the procedural pleading differences between state and federal courts"); *Laguna Village v. Laborers Intern. Union*, 197 Cal. Rptr. 99 (Cal.1983) (holding that "motion to dismiss timely filed in federal court was sufficiently similar to a demurrer to constitute a responsive pleading for purpose of avoiding entry of default"); *Barragan v. Banco BCH* (4th Dist., 1987) 188 Cal. App. 3d 283, 232 Cal. Rptr. 758 (the California Court concluded that the motion to dismiss filed in the federal court was sufficiently similar to a demurrer to constitute a responsive pleading for the purpose of avoiding entry of default); and *St. of New Mexico ex rel., Village of Los Ranchos De Albuquerque, et al. v. City of Albuquerque* (Ct. of App., NM 1994) 119 N. M. 169, 889 Pac. Rptr.2d 204 (holding that "It is generally recognized that pleadings filed in the federal court, while the federal court has jurisdiction, become part of the state court record on remand.")

D. RESPONDENTS' ACTIONS CONSTITUTE A TAKING AND ARE IN VIOLATION OF DUE PROCESS AND EQUAL PROTECTION

Petitioner's gross income from his law practice in California has been several million dollars annually since 1990. The disbarment of Petitioner by the Respondents was in the furtherance of the criminal conspiracy to cover up the anti-trust and unfair competition of Highberger and his group. Respondents were "in league with those who were bent upon abrogation of federally protected rights" (*Pulliam v. Allen*, 466 U.S. 522, 539, 104 S. Ct. 1970, 1979 (1984)). The disbarment was made through perjury,

forgery, corruption, collusion, and obstruction of justice[8]. Such practice not only deprives Petitioners' fundamental rights, but constitutes a taking of property without due process of law and without just compensation in violation of the Fifth and Fourteenth Amendments. App. 47, D.

The property right protected by the Fifth and Fourteenth Amendments includes intangible products of a party's service. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003 (1984).

Article VI, Section 4, and Article VII of the FCN Treaty clearly state that Petitioner "shall enjoy freedom of access to the court of justice" and shall be treated by the USA as the best without "discriminatory treatment." App. 48, F. *See also* Article XV. The FCN Treaty expressly state that Petitioner shall enjoy the provisions and protection of the HC, because all members of the HC receive such protection, and because Petitioner shall not receive "rights and privileges less favorable than the treatment which is or may hereafter be accorded to the nationals of any third party." The same languages are repeated all over the Treaty. DC Action, 1 ER 59-61. Petitioner is afforded equal protection of the laws of the United States according to the FCN Treaty. *See e.g.*, Article II, Section 3. App. 48, F.

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[8] The bribery, corruption, collusion, and ex parte communications practice between Highberger and the State Bar of California and Supreme Court of California have been fully described in DC Action and several criminal indictments against them. Most of the files of the DC Action were filed with the Supreme Court of California and HD and RD of the SBC as thirteen volumes of the excerpts of records.

Respondents have deprived Petitioner of all constitutional rights and privileged guaranteed by the United States Constitution and its amendments as well as the FCN Treaty.

Since no valid service of summons (NTSC), the judgment violates due process of law; it is void and can be set aside at any time. Respondents have no right to claim that Petitioner "had no adequate defense on the merits." *Peralta v. Heights Med. Ctr.* (1988) 485 U.S. 80, 108 S.Ct. 896.

In light of the corrupt nature of the Respondents in the past several years, this Petition must be granted in order to order the Respondents to vacate the default judgment.

II. THE STATE BAR ACT §§ 6068 & 6007(c) AND RULES 101(b)(4), 200(a)(4), 300(c) AND 462, AS APPLIED TO PETITIONER IN THE REPUBLIC OF CHINA AS A CLASS OF ONE, ARE UNCONSTITUTIONAL AND DISCRIMINATORY

A. THE STATE BAR ACT § 6068 ARE UNCONSTITUTIONAL AND DISCRIMINATORY AS APPLIED TO PETITIONER AS A CLASS OF ONE

The State Bar Act § 6068 provides: "It is the duty of an *attorney* to do all of the following:"

The Respondents, based on perjured declarations and forged, non-final and reversed documents, commenced this Action against Petitioner. All allegations made by Respondents and their conspirators referred to Petitioner

as a "party," when Petitioner was represented by attorneys, in the litigations. Petitioner's attorneys were not disciplined for the alleged actions, but Petitioner was disciplined as a "party."

The State Bar Act § 6068 was enacted specifically applicable to an attorney representing his client. It was not made applicable to an attorney who is a "party" and who is represented by attorneys. When petitioner's Caucasian attorneys were not disciplined, but petitioner was disciplined for no act is unconstitutional and is a violation of the FCN Treaty.

The State Bar Act § 6068 is vague and overbroad and is thus unconstitutional. The citizen of the ROC was discriminated and retaliated and had no right to access to the courts of justice. The State Bar Act § 6068, as applied to Petitioner is unconstitutional.

B. THE STATE BAR ACT § 6007(c) AND JUDGE OBRIEN'S ORDER ARE UNCONSTITUTIONAL AND IN VIOLATION OF FCN TREATY AS APPLIED TO PETITIONER AS A CLASS OF ONE

Respondents applied § 6007(c) to enroll Petitioner as an inactive status simply because Respondents' conspirators Highberger, Castellano and others were indicted and prosecuted for felonies, and were sued for their professional misconduct in civil actions. Respondents reasoned that their conspirators are subject to criminal indictments and prosecutions, as well as subject to civil actions, and thus Petitioner's revealing of the above poses a substantial threat of harm to the public.

Respondents did not reason why their conspirators were indicted and prosecuted for commission of felonies, why defaults were entered against them for declaratory and injunctive relief by the DC Action, why Respondents and their conspirators are subject to final and non-appealable preliminary injunctions and why all decisions of Respondents and their conspirators were in effect reversed. To the contrary, it is Respondents and their conspirators who pose a substantial threat of harm to the public. Because they are Caucasians, they are immune from disbarment.

The right to sue and to access to the court is protected by the Constitution. Respondents prohibited Petitioner to file pleading to respond to the frivolous charges and thus allow the default judgment to take away Petitioner's license. Respondents enrolled Petitioner in an involuntary inactive enrollment in order to totally deprive Petitioner's right to sue and right to access to the court.

C. RULES 101(b)(4), 200(a)(4), 300(c) AND 462 ARE UNCONSTITUTIONAL AND ARE DISCRIMINATORY AS APPLIED TO PETITIONER AS A CLASS OF ONE

Rules 200(a)(4) and 462 provide that Petitioner "shall have ten (10) days from the date of *service*" to file a response to the motion for entry of default and to the application for inactive enrollment.

Rules 101(b)(4) mandates Petitioner to file a response to the disciplinary charge within twenty (20) days from the date of service. Rule 300(c) mandates petitioner to file

a petition for interlocutory review within fifteen (15) days from the date of service.

The service is complete upon the mailing.

The international mail would certainly take seven days to 60 days from the United States to Taipei. In many occasions, Petitioner received this court's mail 60 days from the date of postmark. The most visible problem is that when Petitioner receives the mail, the ten days time to act or to respond was over. There are over 200 envelops proving that Respondents' orders and correspondences were delivered to Taipei from the United States after 10 days of service, if they were not lost.

The right of access to the courts has long been held as: (1) "a vital constitutional right."[9] (2) a "general rule"[10]. (3) a fundamental tenet of our judicial system is that legitimate claims should receive a full and fair hearing no matter how litigious the Petitioner's counsel may be,[11] and (4) "protected by the First Amendment."[12]

The decisions of Respondents are conflict with these of the federal courts, which can be summarized as follows:

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[9] *In re Oliver*, 682 F.2d at 446 (3rd Cir. 1982).

[10] *Pavilions v. King*, 626 F.2d 1075, 1079 (1st Cir. 1980).

[11] *In re Oliver*, 682 F.2d 443; *Pavilions v. King*, supra at 1079; *Ruderer v. United States*, 462 F.2d 897, 899 (8th Cir. 1972).

[12] *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 808, at 517 (1972). *See also Chambers v. Baltimore & Ohio R.R.*, 207 U.S. 142, 148, 28 S.Ct. 34, 35, 52 L.Ed. 143 (1907); *Boddie v. Connecticut*, 401 U.S. 371, 374, 91 S.Ct. 780 (1971).

(1). *5th* Circuit "Orders enjoining future *lawsuits* are generally unnecessary because the doctrine of *res judicata* or *collateral estoppel* usually *suffice* to protect defendants from repetitious lawsuits."[13]

(2). *1st* Circuit "We stress that where access to the courts is concerned, an injunction should be drawn as *narrowly as possible.*"[14]

(3). *3rd* Circuit "The court of appeals *narrowly tailored* the injunction to closely fit the specific vice encountered."[15]

(4). *2nd & 10th* Circuit "If an injunction against future litigation issued under 28 U.S.C.A. 1651(a) were couched in *overly broad terms,* this impermissible infringes upon a litigator's right of access to the courts."[16]

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[13] [Emphasis added]. *Harrelson v. The United States,* 613 F.2d 114 (5th Cir. 1980).

[14] [Emphasis added]. *Sire v. Gabriel,* 748 F.2d 49 (1st Cir. 1984).

[15] [Emphasis added] *Gabriel; Castro v. The United States of America,* 775 F.2d 399 (2nd Cir. 1985); *Brow v. Farrelly,* 994 F.2d. 1027 (3rd Cir. 1993). "The broad scope of the District Court's power is limited by two *fundamental tenets* of our legal system – the litigant's right to due process and access to the courts." [Emphasis added] *Brow v. Farrelly,* 994 F.2d. 1027 (3rd Cir. 1993). Imposing an injunction "is an extreme *remedy,* and should be used in *exigent circumstances."* [Emphasis added]. *In re Oliver,* 682 F.2d 443 (3rd Cir. 1982). "Litigiousness alone will not support an injunction restricting litigant's filing activities." *In re Oliver,* 682 F.2d 443 (3rd Cir. 1982).

[16] [Emphasis added] *Castro v. United States of America,* 775 F.2d 399 (2nd Cir. 1985); *Tripati v. Beaman,* 878 F.2d 351 (10th Cir. 1989).

(5). *4th & 11th* Circuit "A court imposing such an injunction must be careful not to order conditions that *effectively deny access to the courts.*"[17]

(6). *D.C.* Circuit "A court must take great care not to *unduly impair* a litigant's constitutional right of access to the courts."[18]

Petitioner hereby request this Court take judicial notice that no United States Post Office can guarantee that the delivery of mail to Taipei in less than 10 days with "insufficient" postage – Respondents often fail to post air mail postage. *See e.g.*, App. 5 & 45 (service by first class mail, not air mail), *see also* DC Action, 4 ER 646, 652-656, 5 ER 749-750, 764, 770-773, 775, 780-786, 788-789 for evidence of insufficient postage. Even with sufficient postage, there is absolutely no guaranty that the mail will reach Taipei in less than ten days. Often the mail went to another country before reaching Petitioner. DC Action, 3 ER 617, 5 ER 787. There is no way to guarantee the receipt of American mail in ten days.

The above rules of RP are unconstitutional because by the time Petitioner received the Respondents' charges, applications and orders, the time to act or respond was over. Such rules effectively deprive Petitioner of the right to access to the court and right to respond.

In light of the above, by statutes, the courts in Taiwan have always extended the maximum courtesy to the

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[17] [Emphasis added] *Robinson v. Marion*, 879 F.2d 863 (4th Cir. 1989); *Procup v. Strickland*, 792 F.2d 1069 (11th Cir. 1986).

[18] [Emphasis added] *Urban v. United Nations*, 768 F.2d 1497, 1500 (D.C. Cir. 1985).

American litigants by adding 44 days to act or to respond, from the date of "receipt", not from the date of "mailing." DC Action, 3 ER 318. In an action against Respondents, the courts in Taiwan has given the Respondents an additional time of four months and 20 days, in the first time, and an additional time of five months, in the second time, to respond and to act. Such practice proves that the Respondents wilfully and maliciously deprived Petitioner of all constitutional rights and violated the FCN Treaty for the equal treatments of the nationals and corporations in both countries.

Moreover, all documents served upon Respondents were translated into English and through the diplomatic channel. It is more than clear that Respondents are discriminating against Petitioner in violation of the FCN Treaty,[19] the U.S. Constitution and international comity.

To avoid perjury and forgery, as committed by Respondents in this Action, the courts in Taiwan allow only the neutral and detached clerks to serve the orders and pleadings through registered mail with return receipt requested. However, both Respondents allow and in fact encourage their judges and clerks in this Action to commit perjury and forgery.

Respondents have repeatedly filed several hundreds and thousands of perjured declarations for service by mail. The first class mail, as opposed to the air mail, cannot be mailed outside the U.S. either, for insufficient postage. *See e.g.*, App. 5 & 45. If the envelope does not

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[19] See Article VI, Section 4 of the FCN Treaty. See App. 48, F.

contain Petitioner's Chinese name and address, the delivery would be unreliable. There are many other reasons, known or unknown, which might have prevented Petitioner from receiving the mail. Therefore, the mail should have not been completed on mailing, but should have been completed upon "receipt" as practiced in the Taiwan courts.

The issuance of preliminary injunctions by the Taiwan Court of Appeal against Respondents and their conspirators proves that Petitioner has reasonable probability to prevail against Respondents and their conspirators. *See Wilson v. Watt*, (9th Cir., 1993) 703 F.2d 395; *Original Appalachian v. Troops*, 642 F. Supp. 1031, 1034 (ND GA 1986); CCP § 391.1. Moreover, the defaults in DC Action have been entered against Respondents. Accordingly, the contents of the default judgments, based solely upon perjured declarations and forged documents, are corruptive and false.

The members of OCTC as well as judges, and clerks of Respondents have been indicted and prosecuted for their perjury, obstruction of justice, forgery,[20] and other felonies. They must be disqualified in the first place pursuant to the holdings in *Concrete Pipe v. Pension Trust* (1993) 113 S.Ct. 2264, 12 L.Ed.2d 539, 560. *Madison Anderson v. Walter Sheppard, et al.*, (1988) 856 F.2d 741; *Marshall*

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[20] Under Chinese Criminal Law, the omission of Petitioner's filing from the docket sheet constitutes one of the forgery categories. Under Criminal Law Sections 215, and 216, such crimes are felonies. These criminals could be punished up to three years imprisonment.

v. Jerrico, Inc., (1980) 446 U.S. 238, 100 S.Ct. 1610, 64 L.Ed.2d 182.

The destruction and concealment of Petitioner's pleadings and filings, the refusals to set the hearing dates and refusals to rule on Petitioner's motions and requests for review constitute a deprivation of Petitioner's right to access to the court.[21]

CONCLUSION

For the reasons stated above, the Petitioner respectfully requests that certiorari be granted and that the case be set down for briefing and oral argument; or in the alternative, that certiorari be summarily granted.

Dated: June 24, 1997

Respectfully submitted,

LAW OFFICES OF SHIEH LIANG-HOUH
Attorney for Petitioner

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[21] *See Los Angeles County Bar Association v. Secretary of the State of California, et al.*, (9th Cir. 1992) 979 F.2d 697, 705; *Bounds v. Smith*, 430 U.S. 817, 821, 97 S.Ct. 1491, 1494, 52 L.Ed.2d 72 (1977); *California Motor Transp. v. Trucking Unlimited*, 404 U.S. 508, 510, 92 S.Ct. 609, 611, 30 L.Ed.2d 642 (1972); *Wolff*, 418 U.S. at 579, 94 S.Ct. at 2986; *Payne v. Superior Court* (1976) 17 Cal.3d 908, 132 Cal. Rptr. 405; *Aurelio Fregoso Jara v. Municipal Court of San Antonio Judicial District* (1977) 137 Cal. 533, 68 Cal. App.3d 673.

SO57359

SBC # 93-O-14106

IN THE SUPREME COURT OF CALIFORNIA

IN BANK

IN RE LIANG-HOUH SHIEH ON DISCIPLINE

(Filed April 2, 1997)

The supplemental petition for writ of review received December 9, 1996, is ordered filed. Permission to file subsequently submitted supplemental petitions is denied. The petition for writ of review is DENIED.

It is hereby ordered that Liang-Houh Shieh be disbarred from the practice of law and that his name be stricken from the roll of attorneys. He is also ordered to comply with rule 955, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar.

*See Business and Professions Code section 6126, subdivision (c).

George, C.J. did not participate.

/s/ Mosk
Acting Chief Justice

STATE BAR OF CALIFORNIA
Office of the Clerk
State Bar Court
1149 South Hill, 5th Floor
Los Angeles, California 90015
(213) 765-1400

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN THE MATTER OF LIANG-HOUH SHIEH A Member of the State Bar	Transmittal of State Bar Court Recommendation S State Bar Court No. 93-o-14106

[ ] Conviction proceeding (rule 951(a), Cal. Rules of Ct.)

[ ] Rule 955 proceeding (rule 955, Cal. Rules of Ct.)

[X] Original proceeding (Bus. and Prof. Code § 6081)

[ ] Other proceeding _____

To the CLERK OF THE SUPREME COURT:

1. RECOMMENDATION. The State Bar Court hereby transmits its recommendation in the above-entitled matter, as reflected in the enclosed proposed order subject to review by the Supreme Court.

2. RECORD ENCLOSED. DUE TO THE VOLUMINOUS NATURE OF THIS PROCEEDING WE ARE FILING ONLY THE PERTINENT DOCUEMENTS [sic] AT

THIS TIME. ALL OTHER PLEADINGS AND EXHIBITS AVAILABLE UPON THE COURT'S REQUEST.

[ ] State Bar Exhibits _____

[ ] Respondent Exhibits _____

[ ] _____ Transcript(s) of State Bar Court Hearings

3. IMPOSITION OF COSTS. Pursuant to Section 6086.10, Business and Professions Code statutorily authorized costs of this disciplinary proceeding should be awarded the State Bar of California. Enclosed are the Certificate of Costs and Statement of Costs pursuant to rule 280-284, Rules of Procedure for State Bar Court Proceedings.

4. MEMBER'S ADDRESS:

State Bar records list the following current address for the above memberr

P.O. Box 84-861
Taipei, Taiwan R.O.C.

5. INFORMATION GIVEN MEMBER. We have this day mailed to the member information about:

rule 951, California Rules of Court
re: Authority of the State Bar Court

rule 952, California Rules of Court
re: review of State Bar Court decision

rule 953, California Rules of Court
re: effective date of Supreme Court Order

rule 954, California Rules of Court
re: grounds for review of State Bar Court decisions in Supreme Court

rule 955, California Rules of Court
re: duties of disbarred, resigned or suspended members

Business & Professions Code Section 6083
re: petition to review State Bar Court decision

Business & Professions Code Section 6086.10 and 6140.7
re: costs of disciplinary proceeding

6. [X] OTHER INFORMATION TO ASSIST THE SUPREME COURT:

This attorney has not had prior discipline imposed. However, on April 25, 1995, Mr. Shieh was ordered inactive pursuant to Business and Professions Code Section 6007(c) in 95-TE-10040.

We would like to bring to the Court's attention that Mr. Shieh currently has no matters pending with the Supreme Court.

Judy Duffield
Clerk of the State Bar Court

Dated:
November 15, 1996

By /s/ Charles Nettles
Charles Nettles
Deputy Court Clerk

DECLARATION OF SERVICE
[Rule 62, Rules Proc. for State Bar Ct. Proceedings; Code Civ. Proc., § 1013a(4)]

I am a Deputy Court Clerk of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. In the City and County of Los Angeles, on the date shown below, I deposited a true copy of the following document

TRANSMITTAL OF STATE BAR COURT RECOMMENDATION DATED NOVEMBER 12, 1996 AND PROPOSED ORDER

in a sealed envelope as follows:

[X] with first-class postage thereon fully prepaid in a facility regularly maintained by the United States Postal Service at Los Angeles, California, addressed as follows:

LIANG-HOUH SHIEH ESQ
PO BOX 84-861
TAIPEI TAIWAN ROC

LIANG-HOUH SHIEH ESQ
PO BOX 84-453
TAIPEI TAIWAN ROC

[ ] by certified mail, with a return receipt requested, in a facility regularly maintained by the United States Postal Service at Los Angeles, California, addressed as follows:

[X] in an interoffice mail facility regularly maintained by the State Bar of California addressed as follows:

Cydney Batchelor, Esq.
Donald Steedman, Esq.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on November 15, 1996.

/s/ Charles Nettles
Charles Nettles
Deputy Court Clerk IV

STATE BAR COURT

STATE BAR OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	**Case No. 93-O-14106-EEB**
LIANG-HOUH SHIEH, No. 128034,	**DECISION**
A Member of the State Bar.	(Filed October 10, 1996)

INTRODUCTION

Liang-Houh Shieh, the Respondent in this matter, through his litigation in California state courts, federal courts, and the State Bar Court, may be considered, as one of his opposing attorneys characterized him, as "the benchmark by which all vexatious litigants in the state of California will be judged." As a result of his actions, the State Bar has charged Respondent with committing acts of moral turpitude, failing to report substantial sanctions imposed against him, failing to show proper respect for courts, pursuing unjust litigation, commencing or continuing legal actions from a corrupt motive of passion or interest, and engaging in actions which constitute an offensive personality. After reviewing this substantial record, the Court agrees with the State Bar that Respondent has engaged in serious misconduct, has greatly harmed individuals and the administration of justice, lacks any insight into his misconduct, expresses no remorse, and, based on the standards and case law, should be disbarred from the practice of law in California.

PROCEDURAL HISTORY

The Notice to Show Cause in this matter was filed on December 30, 1994.[1] The Notice was served on Respondent by the State Bar at his membership records address on January 11, 1995. Respondent did not file anything with the State Bar Court in response to the Notice.

On March 9, 1995, the State Bar filed with the Court and served on Respondent a Notice for Entry of Respondent's Default for his failure to file a response to the Notice. The motion warned Respondent that the State Bar would be seeking his disbarment. The motion was served at Respondent's membership address.

Thereafter, Respondent attempted to remove the disciplinary proceeding to federal district court. By order filed April 10, 1995, the federal court found Respondent's removal petition defective and summarily remanded the case to the State Bar Court for further proceedings. On April 18, 1995, Respondent's default was entered pursuant to rule 200(c), Rules of Procedure of the State Bar.

On May 9, 1995, Respondent filed an *ex-parte* application for, among other relief, an order to vacate his default in this matter. On May 12, 1995, former State Bar Court Hearing Department Judge JoAnne Earls Robbins, the judge then assigned to handle this proceeding, issued an

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[1] Originally Respondent was charged in the Notice along with attorneys Richard R. Hopkins, and Henry M. Guy Rollins. Both Hopkins and Rollins are currently on inactive status. By Order dated December 22, 1995, former State Bar Court Hearing Department Judge David S. Wesley severed Respondent's case from the others.

order indicating Respondent's motion had been filed but not properly served, and required Respondent to refile and reserve the motion before any response would be required from the State Bar. Thereafter, on June 7, 1995, the Court issued an order staying the disciplinary proceedings because Respondent had filed an appeal from the federal district court's April 10 remand order and Respondent claimed he had filed a second notice of removal in the federal district court. By order dated June 16, 1995, the federal district court struck from the record the second set of removal papers.

On December 21, 1995, Judge Wesley, then assigned to replace Judge Robbins as the hearing judge, issued an order lifting the June 7, 1995 stay. Thereafter on February 6, 1996, Judge Wesley granted the State Bar until March 1, 1996 to file its opposition to Respondent's motion to vacate the default. By order filed April 22, 1996, Respondent's motion to vacate the default was denied.

Respondent took Judge Wesley's April 22, 1996 order, among others, to the Review Department, on May 21, 1996 seeking interlocutory review. The Review Department took judicial notice of two orders of the United States Court of Appeals for the Ninth Circuit, one filed on June 2, 1995, and a second on October 13, 1995, denying removal of the case to federal court and remanding the matter to the State Bar Court. In its order denying, inter alia, Respondent's Petition for Interlocutory Review of the Motion for Relief from Default, the Review Department ordered that the State Bar Court would no longer accept from Respondent any further motions for relief from default or petitions for review of denials of such motions.

This case was assigned to this judge on May 1, 1996. On that same day, the State Bar filed its evidence in written form, waived the right to a hearing on the matter, and submitted the case on the admitted facts from the default, its trial brief and accompanying written evidence, constituting sixty-five binders of exhibits. The matter was submitted for decision on May 3, 1996.[2]

FINDINGS OF FACT

Because of Respondent's default, the facts alleged in the Notice are deemed admitted. On that basis, no further proof is required to establish the truth of those charges. (*In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602, 605.) The State Bar also submitted additional documentary evidence, to which Respondent is deemed to have waived any objection. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 110.) The Court bases its findings of fact on both the deemed admissions and the additional evidence submitted.

Jurisdiction

Respondent was admitted to the practice of law in California on June 17, 1987, and has been a member of the State Bar at all times.

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[2] Respondent filed one motion for reconsideration on April 30, 1996 and nineteen Motions for Reconsideration on May 21, 1996. The State Bar filed its responses on June 19, 1996 and the motions for reconsideration were denied by orders filed July 12, 1996.

Background

Respondent is a native of Taiwan, and a graduate of Yale University School of Law. In the mid-1980's he worked at the law firms of O'Melveny & Myers and Gibson, Dunn & Crutcher. From June 1988 until April 1989, Respondent was a senior counsel in the firm of Graham & James. From April 1989 until January 1991, Respondent had been a partner at the law firm of Lewis, D'Amato, Brisbois & Bisgaard. Beginning in January 1991, Respondent was a partner at the law firm of Fulbright & Jaworski.

Respondent's partnership was terminated at Fulbright & Jaworski at the end of May 1991 amid much rancor. Among the issues in dispute was a lawsuit filed by Respondent which was then pending in Los Angeles County Superior Court against the law firm of Graham & James. Controversies also arose over which client files should remain at the law firm or be transferred to Respondent and Respondent's conduct while he was with the firm. As part of this dispute, Respondent filed an action, *Shieh v. Ebershoff et al.* (case no. BC0270441), in Los Angeles Superior Court, in which he unsuccessfully sought an injunction prohibiting Fulbright & Jaworski from communicating with his former clients. After a series of demurrers to successive versions of his complaints were sustained, Respondent dismissed the case-while another demurrer was pending.

The Ebershoff Federal Case

After dismissinghis state court action, in October 1991, Respondent filed a federal court lawsuit against

hundreds of individual attorneys and numerous law firms, alleging essentially the same causes of action raised in the state court action. On July 13, 1992, Federal District Judge William J. Rea heard argument by the defendant law firms on motions to stay the federal court action pending payment of costs of the prior state court action, and motions to dismiss the complaint for improper service and for failure to prosecute. The Court filed an order staying the proceedings pending payment of the costs of the prior state court action, and dismissing the action with prejudice against the defendants Lewis, D'Amato for improper service and for failure to prosecute. The Court declined to exercise pendent jurisdiction over Respondent's state law claims, and reserved the issue of Respondent's remaining RICO claims. The judgment was entered on August 5, 1992. By order entered August 31, 1992, Judge Rea dismissed Respondent's RICO claims with prejudice.

Respondent took two actions in response to the federal court action. On July 31, 1992, Respondent filed a 180-page lawsuit against numerous lawyers and law firms in Los Angeles Superior Court (*Shieh v. Ebershoff, et al.*, case no. BC061170), reiterating the causes of action against Lewis, D'Amato which had been dismissed with prejudice by the federal district court. (See *infra*.) Respondent also appealed the federal court orders to the United States Court of Appeals for the Ninth Circuit. In a memorandum filed December 30, 1993, the Court of Appeals affirmed all of the district courts orders, and by order filed March 28, 1994, denied the petition for rehearing and rejected the suggestion for rehearing.

By order entered January 15, 1993, the federal court set the costs of the prior state court action in the amount of $125,421.00 in favor of Graham & James and $37,236.00 in favor of he Fulbright & Jaworski defendants. On May 27, 1994, the federal defendants moved to dismiss the federal case with prejudice because Respondent had not paid the costs of the state court action. Respondent filed an opposition to the motion to dismiss on June 7, 1994, and in that motion requested reconsideration of the district court orders which had been affirmed by the Ninth Circuit. On June 20, 1994, the federal court dismissed the action and issued an order to show cause why Respondent and his attorney, James Andion, should not be sanctioned under Federal Rules of Civil Procedure, Rule 11 and 28 United States Code §1927 for bringing an improper and frivolous motion for reconsideration. By order entered July 15, 1994, the Court found that Respondent opposed defendant's motion to dismiss on frivolous grounds and requested reconsideration of an issue previously decided by the Ninth Circuit. It concluded that the opposition was "filed in bad faith, or at a minimum, with conscious disregard for counsel's duty to the court." It ordered that Respondent and his attorney, Mr. Andion, pay sanctions in the amount of $1,000.00 under Rule 11.

Fulbright & Jaworski Lawsuit

As a result of their dispute with Respondent, on November 5, 1991, Fulbright & Jaworski filed a lawsuit (*Fulbright & Jaworski v. Liang-Houh Shieh, et al.*, case no. BC41515), alleging that Respondent and others had engaged in numerous tortious acts of misconduct during and after his employment with that firm. Counsel for

Fulbright & Jaworski, the firm of Quinn, Kully and Morrow, noticed deposition of a number of third party witnesses who were purported clients of Respondent, beginning in January 1992. Respondent served objections to the depositions, stating that noneof the individuals would attend the proposed depositions. Fulbright & Jaworski filed a motion to compel, and on February 25, 1992, Superior Court Judge Edward Kakita ordered Respondent and the other deponents to appear at their depositions. The depositions were noticed for April 2, 1992, and Respondent filed objections and indicated that neither he nor the other deponents would appear. Fulbright & Jaworski filed another motion to compel, and on May 4, 1992, Respondent was ordered to pay sanctions of $1,500 to Fulbright for disregarding the court's February 25, 1992 order and for acting without reasonable justification.

A default judgment was entered on June 18, 1992, in favor of Fulbright & Jaworski. On September 11, 1992, Judge Robert M. Mallano found that this case was related to three other proceedings then pending in the Superior Court, *Shieh v. Christopher, et al.* (case no. BC054981), *Araiza v. Shieh, et al.* (case no. GC004191), and *Say & Say v. Castellano, et al.* (case no. BC059833), within the meaning of Los Angeles Superior Court local rule 1303.6. All the cases were assigned to Judge Kakita and the proceedings which flowed therefrom will be discussed *post*.

Ebershoff State Court Proceeding

a. D'Amato demurrer

As noted earlier, on July 31, 1992, Respondent filed a 180-page lawsuit against his former law firms and all the

partners therein, as well as the law firms who had represented the defendant law firms in other actions filed by Respondent. (*Shieh v. Ebershoff, et al.* (case no. BC061170).) The complaint was served on Lewis, D'Amato by Respondent's counsel on December 4, 1992. On January 5, 1993, Lewis, D'Amato filed a demurrer and requested sanctions against Respondent and his counsel, contending that the state court complaint sought to assert claims and allegations which Respondent had raised in his prior federal action, which he was barred from relitigating after its dismissal with prejudice. Lewis, D'Amato sought sanctions from Respondent and his counsel claiming that pursuing the allegations and causes of action after they had been dismissed in federal court constituted frivolous and bad faith tactics within the meaning of Code of Civil Procedure section 128.5. In its pleading, Lewis, D'Amato noted that the allegations in the state complaint were word for word those alleged in the federal matter, down to misspellings and typographical errors.

On January 29, 1993, the trial court sustained the demurrer without leave to amend as to all claims against Lewis, D'Amato and imposed sanctions of $2,750 under section 128.5, finding that Respondent's actions were frivolous and without merit. Respondent filed a motion for reconsideration, which was denied and additional sanctions under Code of Civil Procedure section 1008(d) of $975 were ordered against Respondent and his attorney. The Court of Appeals affirmed the rulings in an unpublished opinion filed on March 7, 1995. Respondent has never reported these sanctions to the State Bar.

b. Respondent Declared Vexatious Litigant

As to the remaining defendants in *Shieh v. Ebershoff, et al.* (case no. BC061170), three groups of defendants[3] moved to have Respondent declared a vexatious litigant under Code of Civil Procedure section 391 and for an order requiring him to post a bond pursuant to section 391.1. After the filing of such a motion prior to trial, the litigation is stayed. (Code Civ. Proc, § 391.6.) Notwithstanding the pending motion and resulting stay, Respondent and his attorney filed on January 19, 1993 a motion to (1) request a continuance of the vexatious litigant hearing until Respondent had completed his discovery, (2) compel depositions of 32 of the defendants and production of documents, (3) stay defendants' discovery until the completion. of his discovery, (4) award sanctions, and (5) order defendants to show cause re: contempt.

At a hearing held on February 18, 1993 and by order filed March 16, 1993, the motions to declare Respondent a vexatious litigant were granted. The action remained stayed, and security was to be posted within 30 days or the Court would entertain a motion to dismiss. Respondent's motion was denied. The Court found that "the motion [was] frivolous and brought without substantial justification, . . . " and ordered that Respondent and his attorney be sanctioned, jointly and severally, and pay opposing counsel a total of $4,500. Respondent filed six

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[3] Graham & James and Jeffer, Mangels, Butler & Marmaro was one; Fulbright & Jaworski, Quinn, Kully and Morrow, Robert Toms, and Eric Lunquist was the second, and Sheppard, Mullin, Richter & Hampton the third.

motions for reconsideration, as well as requesting other relief from the Court. On March 22, 1993, the Court denied the motions for reconsideration with prejudice, found that the motions were frivolous and without justification, and ordered that Respondent and his attorney pay an additional $3790 in sanctions. In its ruling, the Court reiterated that the proceeding remained stayed as to all defendants until 10 days after Respondent provided the security ordered in the March 16, 1993 ruling.

On April 2, 1993, Respondent filed 12 motions seeking "vacation, clarification, modification, and reconsideration" of the Court's rulings on February 18 and March 22. New counsel for Respondent filed voluminous documents in support of the 12 motions. Further, on May 18, 1993, Respondent filed a voluminous first amended complaint, adding as a new plaintiff, Say & Say. This filing was in violation of the stay order issued on February 18 and reiterated in the March 22 ruling. On June 3, 1993, the Court denied the 12 motions, found that they were identical to the six motions for reconsideration previously denied, and that no new or different facts were alleged. It ruled that "the twelve Motions for Reconsideration were brought in bad faith and were frivolous, unnecessary and brought for purposes of delay." The first amended complaint was struck as well. The Court sanctioned Respondent and his attorneys, jointly and severally, a total of $4,810, to be paid by June 23, 1993.

In a separate order filed June 3, 1993, the Court found that Respondent had not filed the required security ordered on February 18, 1993, and therefore dismissed the action in its entirety with prejudice as to all remaining defendants. Respondent and Say & Say appealed the

dismissal and the vexatious litigant determination to the Court of Appeals. The Court of Appeals dismissed Respondent's appeal on October 23, 1993, after finding he was subject to a prefiling order as a vexatious litigant in other proceedings (discussion *infra*) and after according him the opportunity to explain why his appeal had merit. The Court concluded that his appeal in the instant case was maintained for the purpose of harassment. (*Say & Say, Inc. v. Ebershoff* (1993) 20 Cal.App.4th 1759, 1761-1762.) The Court also concluded that Say & Say, Inc., is an alter ego of Respondent which had been used by Respondent to circumvent the provisions of the vexatious litigant statute. Say & Say, Inc. would be held responsible for the acts of the individual who controlled it. The Court concluded that Say & Say, Inc. was a vexatious litigant. Rehearing was denied, as well as three petitions for review to the California Supreme Court. (*Id.* at p. 1770.)

Layman Federal Court Lawsuit

a. Background

Respondent employed attorney Francisca N. Araiza in March 1991 to represent him and his wife in litigation, including litigation involving his former law firm, Fulbright & Jaworski. By June 1991, a dispute arose; Ms. Araiza withdrew as counsel of record and left Respondent's employ. In August 6, 1991, Ms. Araiza filed in Los Angeles Superior Court a lawsuit against Respondent for, among other claims, wages owed to her. (*Araiza v. Shieh, et al.*, case no GC 004191.)

Respondent responded by filing suit on December 6, 1991, in federal district court against Ms. Araiza, Bill

Layman [Araiza's boyfriend], Gemma Sanchez [Araiza's sister], Imperial Savings, a savings and loan association, and Household Bank, a bank which had acquired Imperial Savings. (*Say & Say, et al. v. Layman, et al.*, civil action no. C-91-6690-JGD (TX).) The complaint asserts both state and federal causes of action arising from events which are alleged to have occurred in May and June 1991. The complaint charges Araiza with breaching her oral agreement to render legal services as assigned by Respondent, mishandling cases, cooperating with her codefendants to steal files and other property, and conspiring with Imperial Savings regarding funds held in a trust account in that institution. Respondent listed himself and Gary Hollingsworth as attorneys for the plaintiffs. Mr. Hollingsworth, then employed by Respondent, had urged Respondent not to file the federal lawsuit. Upon learning that his name was listed as attorney of record, Hollingsworth petitioned the court in late February 1992 to withdraw his unauthorized appearance as an attorney for the plaintiffs.

A copy of the summons and complaint in the *Layman* lawsuit were slipped under Mr. Hollingsworth's door on February 29, 1992, while he was away from home. Hollingsworth was not identified as a "Doe" defendant in the summons and complaint and the unsigned note which accompanied the documents indicated without naming Hollingsworth that suit had been filed by Say & Say and Respondent and that an answer should be filed. The complaint had not been amended at the time of this attempted service of Hollingsworth. The operative facts in the complaint occurred before Hollingsworth's employment by Respondent.

Another former employee of Respondent's, Andrew Castellano, received a copy of the summons and complaint in the *Layman* lawsuit in a similar attempt to serve him on February 29, 1992. A package of documents was left on Castellano's doorstep, containing the summons and complaint, the same general notice of suit, and a proof of service indicating personal service by hand to the offices of the Hollingsworth and Castellano. Castellano had worked for Respondent between December 30, 1991, and January 20, 1992. Upon quitting, Castellano filed a claim with the state labor commissioner for unpaid wages on January 22, 1992. Late in the evening on March 2, 1992, on the eve of a settlement conference on the wage claim, someone knocked on Castellano's door and left behind another package of documents, again including the summons and complaint in *Layman*, as well as a notice of taking Castellano's deposition as a defendant in the *Layman* case. The complaint was signed by Respondent on March 3, 1992, and was accompanied by an unsigned proof of service. Again, the complaint had not been amended at the time of the attempted service of Castellano and the operative facts in the complaint occurred before Castellano's employment by Respondent.

Araiza's attorney in the federal case noticed Respondent's deposition for January 29, 1992. Respondent then noticed Araiza's deposition for January 28, 1992, and argued that he had the right to complete her deposition before his commenced because she had refused without cause to complete her deposition in the state court action. Araiza and her attorney were present in Respondent's office for her deposition but Respondent refused to go forward or meet with Araiza or her counsel. Respondent

claimed in a note offered by one of his staff that Araiza's attorney had failed to confirm their appearance by noon the prior day (the confirmation was faxed at 12:13 p.m) and refused to go forward with his noticed deposition the following day until the Araiza deposition was completed.

b. Sanction Order

Araiza, Hollingsworth, and Castellano all filed motions to dismiss and for sanctions. Araiza requested as alternative relief an order compelling Respondent's attendance at his deposition. In an order filed April 14, 1992, Federal District Court Judge John G. Davies dismissed the motions of both Hollingsworth and Castellano as premature in light of Respondent's failure to amend the complaint to add Castellano and Hollingsworth and thereafter to serve them properly. However, the Court found that Respondent's attempts to serve Castellano and Hollingsworth and in opposing the motions were not taken in good faith and that his actions were "frivolous, unreasonable, and reckless, meriting the imposition of sanctions." On Araiza's motion, the Court compelled Respondent to give his deposition, warned that failure to comply could result in sanctions, including possible dismissal, and ordered sanctions of $2,490.50 payable to Araiza based on the Court's conclusion that Respondent had no legal or reasonable factual basis for his failure to cooperate in discovery.

On April 23, 1992, Respondent filed a motion for reconsideration of the sanction order. Responses were filed, and Respondent responded through counsel on June 2, 1992, with a pleading entitled "Plaintiff's Replies

to Opposition to Motion for Reconsideration of Sanctions." In this document, Respondent asserted[4], among other charges, that Judge Davies was conspiring with counsel in other Shieh-initiated litigation then pending in federal court, Judge Davies was willing to be used by "white people against non-white people", Judge Davies was biased against Respondent as a non-white person and that his rulings reflect that bias. The Court combined this motion with a motion filed by Respondent on April 25, 1992 to dismiss his complaint without prejudice and to seal the record of the proceedings. By order filed June 9, 1992, the Court denied Respondent's motion for reconsideration and his motion to seal the record. The motion to dismiss was granted with prejudice. The Court did so because the state law claims had been dismissed on April 16, 1992, the federal civil rights claim had been dismissed on May 20, 1992, and the RICO claim was abandoned by Respondent. The Court also issued an order to show cause why Respondent should not be sanctioned under Rule 11 for filing the complaint in the first instance, and under 28 U.S.C. § 1928 for the memorandum filed on June 2, 1992. Respondent's counsel was also subject to the order because he signed and filed the June 2 memorandum.

Prior to the hearing on the order to show cause, Respondent sought to disqualify Judge Davies. His

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[4] In its brief, the State Bar states in a footnote that James Andion, Respondent's attorney who signed this document, "contends that the document was changed after he signed it and was filed without his knowledge and consent." The State Bar does not indicate where Mr. Andion has made this statement and whether it was under oath or under penalty of perjury.

request was construed as a motion to disqualify and by order filed July 29, 1992, the motion was denied by Judge Richard A. Gadbois.

The hearing regarding sanctions was held on August 31, 1992, and an order issued the following day. In it, the Court found that Respondent violated Rule 11, which provides that the signatory of a document filed with the federal court represents to the Court that after reasonable inquiry, the document is well grounded in fact, warranted by existing law, and not interposed for an improper purpose. In this case, the Court stated

> An objective review of plaintiffs' complaint reveals the paucity of their federal claims. The allegations concerning civil rights and RICO are completely insufficient to support those causes of action. Plaintiffs admitted as much by failing to amend their civil rights claim and by failing to file a RICO case statement. Thus plaintiffs' complaint was not well grounded in fact nor warranted in existing law. The complaint was frivolous and was filed with this Court to harass, and to frustrate the progress of a state court action previously filed by Ms. Araiza.

The Court sanctioned Respondent $7500 for filing the complaint and ordered that Ms. Araiza and her attorneys be paid within 20 days.

As to the reply filed on June 2, 1992, the Court found that it contained inflammatory, disparaging, and uncivil remarks directed at the Court and opposing parties. For filing the reply in bad faith and for vexatious reasons, the

Court sanctioned Respondent $2,500 as both a party and as attorney of record in the matter[5].

The district court's actions were affirmed by the U.S. Court of Appeals for the Ninth Circuit on December 29, 1993, Respondent's petition for rehearing was denied, and the suggestion for rehearing *en banc* was rejected. None of the sanctions were reported by Respondent to the State Bar.

Ariaza State Court Action [Catellano case]

After dismissal of his federal court action, *Shieh v. Layman, et al.*, in June 1992, Respondent filed an identical lawsuit in Los Angeles County Superior Court on July 15, 1992, *Say & Say, el al. v. Castellano, et al.* (case no. BC059833). As noted earlier, this case was found to be a related case to three others then pending in the Los Angeles Superior Court and it, along with the others, was assigned to Judge Edward Y. Kakita on September 11, 1992. Motions were filed by the defendants in all the cases to have Respondent declared a vexatious litigant, and to require Respondent to post security before proceeding further. While the motion was pending and a stay was in effect, Respondent attempted to serve another possible defendant and filed an amendment to his complaint naming another Doe defendant. After hearing on November 17, 1992, the Court found Respondent to be a vexatious litigant under Code of Civil Procedure section

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[5] Respondent's counsel, James Andion, was also sanctioned $2,500 payable to the Clerk of the Court, as the attorney responsible for signing and filing the reply.

391(b)(3) and (4), ordered Respondent to post bond in the amount of $100,000 each for the benefit of Araiza, Castellano, and Hollingsworth, stayed all proceedings in the case pending the posting of security, entered a prefiling order under section 391.7, prohibiting Respondent from filing any new litigation in California state courts without first obtaining leave of the presiding judge in the applicable court, and, finally, ordering Respondent to show cause why the lawsuits subject to the order should not be dismissed if security were not furnished by December 17, 1992.

Respondent filed a motion for reconsideration on December 1, 1992. On January 15, 1993, Respondent filed a motion to strike documents submitted in support of the vexatious litigant motion which had been granted on November 17. In fact it sought reconsideration of the vexatious litigant ruling, although the December 1 motion was still pending. It was filed after the statutory deadline for requesting reconsideration, was improperly served, and was set for the wrong department in superior court (in an attempt to have a judge other than Judge Kakita rule on it). On May 24, 1993, the motion was denied, and Respondent and his counsel were sanctioned $687.50.

Christopher Litigation

Respondent filed suit in federal district court on December 23, 1991, against two large law firms who had formerly employed him, O'Melveny & Myers and Gibson, Dunn, & Crutcher, along with all of the partners in the firms, a number of financial institutions, and an attorney

who formerly represented Respondent, charging them with various state and federal causes of action, including RICO, wrongful termination, invasion of privacy, breach of contract, and discrimination. The claims were voluntarily dismissed without prejudice by order filed May 7, 1992.

Respondent then filed the identical lawsuit in superior court on May 11, 1992[6]. (*Shieh v. Christopher*, case no. BC054981.) As noted earlier, this case was reassigned, on September 11, 1992, to Judge Kakita along with a number of other Shieh-related lawsuits then pending in the superior court. On December 11, 1992, Respondent was declared to be a vexatious litigant in both the *Christopher* and *Castellano* cases, and the cases ordered stayed pending posting of security. Notwithstanding the stay, Respondent and his attorneys filed two motions to compel discovery, a motion for leave to file an amended complaint, and a motion for leave to file a second amended complaint. They commenced a new identical lawsuit in Orange County Superior Court on June 2, 1993 (*Say & Say v. O'Melveny and Myers, et al.* (case no. 711620), the day before the dismissal motion was scheduled to be heard. The action was dismissed with prejudice on June

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[6] According to the Court of Appeals, many of these claims were the subject of two prior lawsuits filed by Respondent in superior court, *A. Shieh v. Michael Newman, et al.* (case no. NEC53509) and *L.C. Shieh v. David I. Thompson, et al.*, (case no. NEC54381). Respondent's appeals regarding the dismissal of those cases was pending in the Court of Appeals at the time of the filing of the *Christopher* case in superior court. (See *In re Shieh, supra*, 17 Cal.App.4th 1154, 1162-1163.)

3, 1993, when Respondent failed to post the required security.

Challenges to Judge Kakita

a. Superior Court Proceedings

Respondent filed a peremptory challenge to Judge Kakita on November 18, 1992, which was rejected as untimely. Respondent then filed a "Notice of Related Case and Request for Replacement of Judge Kakita" on December 10, 1992. In a further statement of disqualification filed December 17, 1992, Respondent accused Judge Kakita of being in a conspiracy with and serving as the "instrumentality" of opposing counsel. Respondent further alleged that as a conspirator, Judge Kakita was a witness in the actions pending before him; that Judge Kakita was brainwashed by one opposing counsel; and that his actions in the proceedings constituted obstruction of justice. On February 26, 1993, Assistant Presiding Judge Ted Millard denied the disqualification motion[7], finding that it was "wholly frivolous, a sham, and outrageous" and further found Respondent to be "a vexatious litigant whose campaign of litigation terror appears to accuse nearly every judge who has ever ruled against him of being 'biased' or a 'racist.' " Respondent was prohibited from filing any future challenges for cause unless he first sought and received approval from the presiding judge.

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[7] Respondent filed two other disqualification challenges to Judge Kakita in two of the other related cases before Judge Kakita.

Respondent filed a petition for a writ of mandate with the Court of Appeals on March 15, 1993, which was denied on March 24, 1993. The Supreme Court denied review on April 21, 1993.

On March 16, 1993, Respondent filed with Judge Millard three motions for "clarification, modification and reconsideration" of his February 26 order. Judge Millard denied the motions by minute order filed March 22, 1993. On March 29, 1993, Respondent filed three more motions entitled "New and Supplemental Request for Clarification, Modification, and Reconsideration Re: Disqualification of Honorable Judge Kakita," which Judge Millard found to be identical to the motions filed and denied the week before. He found the new motions to be untimely, not supported by new facts, "frivolous, a sham, and outrageous." He struck them from the record and ordered that no further motions of that type could be filed by Respondent without leave from the Presiding Judge.

Respondent filed a second petition for a writ of mandate with the Court of Appeals on March 30, 1993, again seeking review of his attempts to disqualify Judge Kakita. He added as new grounds that Judge Millard should have granted his requests for reconsideration. On April 9, 1993, the Court of Appeals issued an order to show cause why Respondent, his fellow plaintiffs, and Respondent's counsel should not be sanctioned for the filing of the second petition for writ of mandate. Respondent did not appear but his counsel filed a written response.

In an opinion filed June 30, 1993, the Court found the second writ petition to be untimely, repetitive, frivolous and part of a pattern of relitigating settled issues. In its

view, "[T]here can be no reason for having filed the instant petition other than to cause respondents further unnecessary delay and expense." The Court sanctioned Respondent and his counsel $5,000 each. The Supreme Court denied review. These sanctions were not reported to the State Bar.

b. Appeals of Vexatious Litigant Ruling

While pursuing his effort to disqualify Judge Kakita, Respondent filed three different notices of appeal of the vexatious litigant ruling with the Court of Appeals. On September 9, 1993, defendant Hollingsworth moved for consolidation of the appeals and dismissal. Respondent's opposition to the motion to dismiss was voluminous but largely unresponsive. On December 2, 1993, the Court of Appeals ordered Respondent and his counsel to show cause why the appeals should not be dismissed and why they should not be sanctioned.

In the Court's opinion, in *Say & Say v. Castellano* (1994) 22 Cal.App.4th 88, two of the three appeals were dismissed because there were no appealable orders or judgments rendered or entered within the scope of the notices of appeal filed by Respondent[8]. The Court found that there was an improper purpose for filing the notices: "[P]laintiffs typically file these notices of appeal from

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[8] The third order was found to be appealable. The dismissal of the appeal was sustained on the grounds that in April and May 1993, just prior to filing the appeal, Respondent had been adjudged in contempt of court on three occasions and was not entitled to seek court assistance until the contempts were purged. (*Say & Say v. Castellano, supra*, 22 Cal.App. 4th 88, 94.)

nonappealable orders immediately after the superior court indicates it is considering a course of action, and then contend that the court lacks jurisdiction to take the action considered due to the pending appeal or appeals." (*Id.* at pp. 92-93.) As to Respondent's opposition to the motion to dismiss, the Court indicated that only one paragraph in its 131-page brief dealt with the appealability of the orders and one page discussed the issues raised in the dismissal motion. Instead, the Court found the opposition attempted to obscure the real issues and was wholly frivolous. In light of Respondent's failure to change his conduct after the imposition of lesser sanction awards, the Court imposed on Respondent a total of $50,000 in sanctions, all but $4,000 of which was to be paid to the Court of Appeals, Second Appellate District, and the balance divided among the defendants/movants[9]. Respondent has not reported these sanctions to the State Bar.

On February 14, 1994, Respondent filed a petition for rehearing of *Say & Say v. Castellano, supra,* 22 Cal.App. 4th 88, along with two other Court of Appeal orders. In his pleading, Respondent accused the justices of having colluded with and been corrupted by large law firms, and of discriminating against him as a minority. The petition for hearing was denied without comment. (*Say & Say v. Castellano, supra,* 22 Cal.App. 4th 88, 95.)

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[9] Respondent's counsel, James Andion, was also sanctioned a total of $50,000, on the same terms imposed on Respondent.

Sanctions in Christopher and Castellano Cases

a. Sanctions in Christopher Case

After motions were filed seeking to declare Respondent a vexatious litigant in the *Christopher* case, Respondent violated the automatic stay repeatedly and engaged in other improper litigation tactics. In response, the defendants filed two motions seeking sanctions. The first was filed on January 19, 1993, and was heard on June 28, 1993. In its order filed September 24, 1993, the Court found Respondent's entire action to be a sanctionable activity and noted, "this judge in more than 13 years of judicial service on this court has never seen more frivolous, bad-faith lawsuit and litigation tactics conducted solely for the purpose of harassment and unnecessary delay, . . . " By way of example, the Court noted seventeen specific acts by Respondent or his counsel which were grounds for sanctions. Included were Respondent's many frivolous disqualification motions against Judge Kakita, and Respondent's service of three sets of form interrogatories requiring responses from each of the 340 defendants, and two attempts to set depositions of party defendants – these latter filings all in violation of the automatic stay. The Court ordered sanctions against Respondent and his various attorneys, jointly and severally, in favor of defendants totaling $94,785.99. An additional $7,500 for the five violations of the automatic stay, was ordered payable to the superior court.

The second sanction motion in the *Christopher* case, filed July 21, 1993, was scheduled before Judge Kakita in November 1993. Before he could rule on the motion, he recused himself from the case because Respondent filed

suit against him in federal district court. Thereafter the motion was combined with parallel contempt and sanction proceedings in the *Castellano* case. A multi-day hearing was held.

In *Christopher,* the Court filed a 64-page decision on May 31, 1994, addressing Respondent's actions clarify since January 19, 1993. Thirty specific findings were made by the Court[10], reflecting, among other matters, violations of the Court's stay order, frivolous and outrageous pleadings filed in attempts to disqualify Judge Kakita, documents filed with incorrect or backdated proof of service declarations, repeated pleadings seeking Judge Kakita's disqualification in violation of Judge Millard's order requiring leave of the Presiding Judge to file them, and numerous premature writs to the Court of Appeals to stymie actions in the superior court. The Court found that Respondent's actions were knowing, made in the face of numerous warning letters sent to his attorneys (and copied to him), and demonstrated Respondent's bad faith, particularly in Respondent's efforts to disqualify Judge Kakita. The Court found that Respondent was "at war" with the courts, individual judges, his former law firms, and attorneys who were his ex-employees. Three tactics were used primarily by Respondent in directing his attorneys. First, he moved between federal and state court when he felt that the judge in a given case was inclined to rule against him – dismissing the case in one court and refiling it in the other jurisdiction. Second, he filed peremptory challenges or recusal motions. Third, he filed premature notices of appeal. In his efforts to disqualify

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[10] These are set forth in the State Bar's brief at pages 54-57.

Judge Kakita, Respondent did not hesitate to accuse him of judicial misconduct without any basis in fact or law, but "as purely a vindictive matter." The Court ordered that Respondent be sanctioned $237,000 ($37,000 to the Los Angeles Superior Court and the rest to the defendants). His counsel were sanctioned lesser amounts.

b. Sanctions in Castellano Case

On May 31, 1994, on the same day as the *Christopher* decision, the Court filed its 64-page decision and orders in the *Castellano* matter. As in *Christopher,* Judge Kakita had recused himself. Judge C. Bernard Kauffman heard the motion. The decision covered the period from August 20, 1992 through July 29, 1993. Unlike the *Christopher* case, there had been no prior sanction orders.

The Court found that in filing his lawsuit, Respondent acted from improper motives and a desire for malicious retaliation. Castellano was named in the suit because he had filed a wage claim and had secured sanctions against Respondent in the federal court action. Hollingsworth was targeted in retaliation for notifying the federal court that Respondent had improperly listed Hollingsworth as attorney of record in the federal court action, for obtaining sanctions against Respondent in the federal court action, and for filing a wage claim against Respondent. Ivy Yuen was named only because she was Hollingsworth's wife – and to further harass Hollingsworth. Wesley Rusch, another ex-employee, was sued because he made a wage claim against Respondent. Respondent sued Francesca Araiza because she had filed suit to prevent Respondent from using her name and for

payment for legal work performed for him. The Court found that the superior court action was frivolous and intended to harass the defendants.

The Court found that Respondent's assertions that he was not acting *in pro per* were made with the intent to mislead the Court. Further, Respondent was found to be at all times in control of the litigation. Actions of his counsel were ratified by him. He had been warned as early as August 1992 about the risk of possible sanctions for continuing his frivolous lawsuit.

In pursuing their litigation goals, Respondent and his counsel violated both the automatic stay in effect after the first vexatious litigation motion was filed on September 3, 1992, and Judge Kakita's order of November 17, 1992, declaring Respondent a vexatious litigant and staying all proceedings until bond was posted. Activities such as serving several deposition notices and two sets of interrogatories, filing two motions to compel depositions and a motion to file an amended complaint, attempting to serve the complaint on Ivy Yuen during both stays, were grounds for the Court to conclude that Respondent and his attorneys had decided to ignore the stay order. Finally, all of Respondent's efforts to disqualify Judge Kakita were designed for the sole purpose of delaying the inevitable dismissal of the case.

The Court sanctioned Respondent a total of $122,749.35, plus costs. Again, Respondent's counsel were sanctioned in lesser amounts, with Respondent made jointly and severally liable. Respondent has not reported these sanctions to the State Bar.

Contempt Proceedings

These proceedings originated when Respondent failed to personally appear as ordered at a hearing on April 22, 1993, on a motion by defendant Ivy Yuen to have him declared a vexatious litigant. The Court issued an order to show cause re: contempt, returnable on June 28, 1993, based on Respondent's failure to appear, and violations of the stays. The Court identified three violations of the stay: a motion to compel discovery filed May 4, 1993, and a motion for leave to file first amended complaint filed May 12, 1993, both in the *Castellano* case, and a motion for leave to file a second amended complaint filed in the *Christopher* matter on April 27, 1993.

Although his attorney did file written opposition on his behalf, Respondent did not appear at the June 28 hearing. An attachment for default was issued for Respondent, and on July 19, 1993, bail was set at $100,000 for each of the *Christopher* and *Castellano* matters. Respondent was taken into custody in February 1994, his motion to quash the attachment was denied, and he posted bail. A further order to show cause re: contempt was filed on February 10, 1994.

The contempt hearing was held on March 31, 1994. The Court found beyond a reasonable doubt that Respondent had notice of the Court's order, had the ability to comply with the Court's order, failed to comply with the Court's order, and that the failure to comply was willful. The Court found Respondent guilty of one count of contempt in the *Christopher* case and two counts of contempt in the *Castellano* case, and ordered him to appear for sentencing on April 21, 1994. Respondent did not appear

for sentencing. His failure to appear and his disobedience of the Court's order were found to be in contempt of court, his bail was forfeited, and a bench warrant was issued for his arrest. Respondent remains at large.

Bankruptcy Filing

In early 1994, Respondent filed for bankruptcy. In a filing with the Court, Respondent indicated that he did not recognize any of the decisions of the California state courts or the federal courts. He accused California judges generally of committing bribery, lying, and forging documents. The California Court of Appeal for the Second District was described as a "crime family" and a "Judicial Mafia." Specific judges were accused of being wholly owned and controlled by large law firms and derogatory descriptions of judges, opposing counsel, and witnesses were used throughout.

CONCLUSIONS OF LAW

Business and Professions Code section 6068(f)[11] [offensive personality]

At the outset, the Court will dismiss the charges in counts two, three, and twenty-one, that Respondent violated section 6068(f), consistent with the decision of the United States Court of Appeals for the Ninth Circuit in *U.S. v. Wunsch* (9 Cir. 1996) 84 F.3d 1110. The State Bar decided not to seek review of that decision in the United States Supreme Court. Since that decision, the State Bar

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[11] Unless otherwise indicates, all references to section(s) are to the sections of the Business and Professions Code.

has, in many pending cases, withdrawn charges of "offensive personality" under section 6068(f).

Section 6106 [acts of moral turpitude]

Section 6106 applies to Respondent's conduct, even if he acted in a private capacity and not as an attorney. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 951.) The State Bar argues three bases for finding Respondent culpable of committing acts of moral turpitude contrary to section 6106. The Court finds that the first two theories are sufficient to support violations of the statute.

Respondent is charged with deliberately violating court orders. These can be divided into two groups: those which were the subject of contempt citations (counts 15 and 19) and those included in the sanction orders (counts 4, 10, 16, 18 and 20). A contempt citation alone is not sufficient ground for attorney discipline. (*Maltaman v. State Bar, supra,* at p. 953.) However, if circumstances establish "bad-faith" disobedience, then discipline is warranted under section 6106. (*Ibid.*) Here, two of the three counts of contempt concerned Respondent's filing documents in violation of stay orders and in furtherance of what the superior court found to be unmeritorious and vexatious litigation. The third was for Respondent's violation of the court's order to appear at proceedings in which he was both party and attorney. Further Respondent did not submit to the contempt proceedings willingly. In fact, he had been at large for a number of months, was taken into custody pursuant to the court order, and appeared after posting bail. Respondent's failure to appear thereafter at his contempt sentencing, the

forfeiture of his bail, and the current warrant for his arrest all corroborate his bad faith. This is clear and convincing evidence of moral turpitude.

Respondent's violation of court orders in the *Fulbright* case [count 4 – $1500 sanction for disobeying court order to attend deposition without reasonable justification], *Castellano* case [count 16 – numerous filings in deliberate disregard of stay order], and *Christopher* case [count 18 – $7,500 sanction to court for 5 filings in violation of stay order; count 20 – unspecified sanctions for numerous filings in deliberate disregard of stay order and order requiring leave of court] were all specified grounds for sanctions by the courts involved. In each instance Respondent was found to have acted in bad faith or without reasonable justification. However, in the *Ebershoff* state court action (count 10), the court struck the pleading filed in violation of the stay order but did not consider whether the filing constituted grounds for sanctions or was done in bad faith. The focus of the court's June 3 order in the *Ebershoff* case was Respondent's multiple, meritless motions for reconsideration of the vexatious litigant ruling, not violation of the stay. Therefore, the "bad faith" test required under *Maltaman* has not been met. (*Id.* at p. 951.) We conclude that Respondent violated section 6106 in willfully disobeying court orders as alleged in counts 4, 15, 16, 18, 19, and 20.

Respondent was also charged in count 22 with engaging in a pattern of misconduct which, seen as a whole, amounted to moral turpitude. Unfortunately, count 22 read alone does not specify the acts or elements in Respondent's conduct charged in the preceding 21 counts

which support the finding of moral turpitude[12]. However, Respondent was informed by the charges in counts 4, 10, 15, 16, 18, 19, and 20 that his conduct in violating these orders involved moral turpitude. In these counts Respondent is charged with violations of numerous court orders. These violations were grounds for sanctions or contempt proceedings against Respondent, and together constitute a pattern of serious, habitual abuse of the judicial system consistent with a finding of moral turpitude. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186.) On this narrower ground, the Court finds culpability on count 22.

The State Bar also charges in count 21 that Respondent's filing of a bankruptcy pleading containing statements which were outrageous, demeaning, and slanderous to judges, opposing counsel, and witnesses was so serious as to amount to moral turpitude. Aside from citing cases where there is wide discretion in defining the term "moral turpitude," the State Bar has not provided any case law to support a finding of moral turpitude in this context. Coupled with First Amendment concerns in this area, particularly in attorney disciplinary proceedings (see *Standing Committee v. Yagman* (9 Cir. 1995) 55 F.3d 1430, 1438-1442), we do not find clear and convincing evidence that such conduct constitutes moral turpitude under section 6106.

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[12] An example of a proper notice pleading consistent with these charges was set forth by the Review Department in footnote 3, of its opinion in *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186.

Section 6068(c) [maintaining unjust litigation]

Counts 1, 2, 5-14, 16, 17, 18, and 20 charge Respondent with violating his duty under section 6068(c) by repeatedly filing and pursuing baseless and vexatious litigation. This is confirmed by the designation of Respondent as a vexatious litigant in all the state court actions discussed in this proceeding. Further, in *Layman*, *Ebershoff*, *Castellano* and *Christopher*, each court found that Respondent initiated frivolous and meritless lawsuits with no basis in fact or law. In the *Ebershoff*, *Castellano* and *Christopher* matters, Respondent was sanctioned repeatedly for pursuing meritless, duplicative, and frivolous motions and appeals. Culpability on these counts is amply supported by the record.

Section 6068(g) [litigation pursued for corrupt motive or passion of interest]

In count 24, Respondent is charged with violating section 6068(g), which provides that an attorney has a duty "[n]ot to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest." The count does not identify the litigation at issue, but by incorporating counts 1 through 21 by reference, it can be read to charge that all the lawsuits discussed in the prior counts were pursued by Respondent for a purpose prohibited by the statute.[13] This charge is sustained by the record as a whole, as to every lawsuit filed by Respondent and covered by this

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[13] This argument as to adequate notice would be more difficult to sustain in the cases of Respondent's former co-respondents, who were not involved in all the lawsuits at issue.

disciplinary case. As discussed earlier, Respondent was sanctioned repeatedly for filing lawsuits to harass his opponents. Even in the two matters briefly discussed which were not subjects of a sanction order, *Shieh v. Ebershoff et al.* (case no. BC0270441) and the federal case against O'Melveny & Myers, et al, the subsequent history in both cases confirms that all Respondent's litigation against his former law firms and ex-employees was motivated by spite and vindictiveness, motives which run contrary to the statute. (*Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1042.)

Section 6068(o) (3)

Respondent failed to report any of the over $500,000 in sanctions imposed in the many lawsuits at issue in this case.

Section 6068(b) [respect for courts]

There is ample evidence to support the charges in counts 4, 10, 15, 16, 18, 19, and 20 that by deliberately disobeying court orders, Respondent also violated his duty under section 6068(b) to maintain the respect due to the courts of justice and judicial officers. (*Maltaman v. State Bar, supra*, 43 Cal.3d 924, 951.) Additional violations of the statute resulted from Respondent's campaign to disqualify Judge Kakita. As set forth in counts 5, 13, 16, 17, 18, and 20, it was, as Judge Millard characterized it "wholly frivolous, a sham, and outrageous." Judge Kauffman, in sanctioning Respondent for these tactics, concluded that Respondent acted in a purely vindictive manner in seeking Judge Kakita's disqualification.

As to the remaining charges under section 6068(b), these involve allegations that Respondent failed to show proper respect for judges by filing various pleadings which contained unjustified and demeaning allegations concerning judges and the judicial system. This kind of charge has been sustained in the past by the California Supreme Court in *Ramirez v. State Bar* (1980) 28 Cal.3d 402, by a bare majority of justices. The dissent in that case, written by Justice Newman and joined by Chief Justice Bird and Justice Tobriner, discussed the First Amendment and free speech implications of the statute punishing attorneys for comments made demeaning the judiciary, issues which were studiously avoided by the majority. These principles have been discussed and applied more recently in a case previously cited, *Standing Committee v. Yagman, supra,* 55 F.3d 1430, in the context of the constitutional protections accorded to attorneys who make statements which impugn the integrity of the judiciary. While it may be instructive at some future date to compare and contrast these two cases in circumstances where the outcome might have real import, this is not the case here. Therefore, the Court will dismiss these counts without prejudice.

MITIGATING AND AGGRAVATING CIRCUMSTANCES

Mitigating Circumstances

The only mitigating circumstance from the record is Respondent's lack of a prior record of discipline. However, under the Standards for Attorney Sanctions for Professional Misconduct, the absence of a prior record of discipline is mitigating only if coupled with misconduct

which is not serious. (Standard 1.2(e)(i).) We find that Respondent's conduct was of a most serious nature such that standard 1.2(e)(i) does not apply.

Aggravating Circumstances

We find that Respondent's misconduct is aggravated by clear and convincing evidence of numerous aggravating factors. There was a pattern of repeated abuse of the judicial process and multiple acts of wrongdoing (standard 1.2(b)(ii). Significant harm resulted to the many defendants involved in Respondent's vexatious litigation "war" who, because of Respondent's flight and concealment of assets, will never recover the sanctions and costs owed to them. (Standard 1.2(b)(iv) The judicial system was stymied by Respondent's wasteful and meritless litigation, and he proceeded undeterred by enormous sanctions and stay orders. (*Ibid.*) His actions were in bad faith and motivated by base and improper aims. (Standard 1.2(b)(iii).) His tactics as a whole are devoid of any consideration for the victims of his "war." (Standard 1.2(b)(vi).) He is defiant and unrepentant. (Standard 1.2(b)(v).)

Standards

Under Standard 1.3, the purpose of State Bar disciplinary proceedings is to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible standards of conduct for attorneys. In cases of attorneys who commit acts of moral turpitude, standard 2.3 calls for imposition of actual suspension or disbarment depending on the harm to the victims, the

magnitude of the misconduct, and the degree to which the acts relate to the member's practice of law. Standard 2.6 requires either suspension or disbarment, dictated by the gravity of the offense and the harm to the victim.

DISCIPLINE RECOMMENDATION

In another case regarding an attorney unjustly defiant in the face of multiple contempt citations, the Supreme Court said, "Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney." (*Barnum v. State Bar, supra,* 52 Cal.3d 104, 112.) Another attorney at war with the courts, Betsy Lebbos, was disbarred by the Supreme Court after it found that "[i]t is evident that [Lebbos] has no appreciation that her method of practicing law is totally at odds with the professional standards of this state." (*Lebbos v. State Bar* (1991) 53 Cal.3d 37, 45.) Although the following quote described a different abusive litigant, Walter Alexander Varakin, his misconduct in pursuing four lawsuits is far outstripped by the magnitude and scope of Respondent's actions,

> Respondent's repeated acts of moral turpitude demonstrate that he is no longer worthy of membership in the bar. Nothing the attorney discipline system can do will prevent respondent from continuing to abuse the legal system as a litigant, if he so chooses. But disbarring respondent will at least prevent him from continuing his abusive course of conduct under the cloak of authority conferred on him by his membership in the bar. (*In the Matter of Varakin, supra,* 3 Cal. State Bar Ct. Rptr. 179, 191.)

These conclusions are no less true of Respondent. Respondent's disbarment is required under the case law, the Standards, the facts, and the equities.

RECOMMENDED DISCIPLINE

Based on the foregoing, the Court recommends that Respondent, Liang-Houh Shieh, be disbarred from the practice of law in the State of California.

COSTS

It is also recommended that the costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10.

DATED: OCTOBER 10, 1996

/s/ Eugene E. Brott
Eugene E. Brott
Judge of the State Bar Court

DECLARATION OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Coordinator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. In the City and County of San Francisco, on October 10, 1996, I deposited a true copy of the following document(s)

DECISION filed October 10, 1996

in a sealed envelope as follows:

[XX] with first-class postage thereon fully prepaid in a facility regularly maintained by the United States

Postal Service at San Francisco, California, addressed as follows:

LIANG-HOUH SHIEH
P O BOX 84-861
TAIPEI
TAIWAN ROC

[ ] by certified mail, with a return receipt requested, in a facility regularly maintained by the United States Postal Service at San Francisco, California, addressed as follows:

[XX] in an interoffice mail facility regularly maintained by the State Bar of California addressed as follows:

DONALD STEEDMAN
OFFICE OF TRIAL COUNSEL – SF

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 10, 1996.

/s/ Lauretta Cramer
Lauretta Cramer
Case Coordinator
State Bar Court

D. The United States Constitution, Art. VI, Section II: " . . . all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Fifth Amendment: ". . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment: " . . . No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

E. The California Constitution, Art. 6, § 11: "The Supreme Court has appellate jurisdiction . . . "

F. The Treaty of Friendship, Commerce And Navigation Between the Republic of China and the United States of America

ARTICLE II —

3. The nationals of either High Contracting Party shall not in any case, in the enjoyment of the rights and privileges . . . receive . . . less favorable than the treatment which is or may hereafter be accorded to the nationals of any third country.

ARTICLE VI

1. Throughout the whole extent of the territories of each High Contracting Party the nationals of the other High Contracting Party shall receive the most constant protection and security for their persons and property, and shall enjoy in this respect the full protection and security required by international law.

2. The property of nationals, corporation and associations of either High Contracting Party shall not be taken within the territories of the other High Contracting Party without due process of law and without the prompt payment of just and effective compensation.

4. The nationals, corporations and associations of either High Contracting Party shall enjoy freedom of access to the courts of justice and to administrative tribunals and agencies in the territories of the other High Contracting Party, in all degrees of jurisdiction established by law, both in pursuit and in defense of their rights; shall be at liberty to choose and employ lawyers, interpreters and representatives in the prosecution and defense of their rights before such courts, . . . and shall be permitted to exercise all these rights and privileges, in conformity with the applicable laws and regulations, if

any, which are or may hereafter be enforced by the duly constituted authorities, on terms no less favorable than the terms which are or may hereafter be accorded to the nationals, . . . of such other High Contracting Party and no less favorable than are or may hereafter be accorded to the nationals, . . . of any third country.

G. Law Governing Extension of Assistance to Foreign Court

Article 2

Such assistance shall not violate the statutes and ordinances of the Republic of China.

Article 3

The substance of each case commissioned by a foreign court shall be stated in writing and transmitted through diplomatic channels.

Article 4

The foreign country where the foreign court requests for an assistance from the court of the Republic of China must state that it would provide a reciprocal assistance if a court of the R.O.C. requests for an assistance under the same or similar circumstance.

Article 5

Each foreign court requests for the assistance from the court of the Republic of China shall set forth in its commission [power of attorney] the name, nationality,

and domicile, residence, or office address, business address of the person to be served.

Article 6

Each court shall effect discovery [investigation of evidence] according to the theme of the foreign court's commission and in accordance with the provisions governing the discovery under the Code of Civil Procedure and the Code of Criminal Procedure.

Each foreign court requests for the assistance from the courts in the Republic of China for the discovery shall, in its commission, set forth the names of the parties, the device of discovery [kinds of evidential methods], the names, nationality, domicile, residence, or office address, business address of the responding party or third party, and set forth the matters subject to the discovery [to be investigated].

Article 7

If the commission [power of attorney] requesting for the assistance from the courts of the Republic of China and other relevant documents of a case are in a foreign language, true Chinese translations shall be attached with a certificate that the translation is true and correct.

H. STATE BAR ACT

§6007. Involuntary Enrollment as an Inactive Member

(c)(1) The board may order the involuntary inactive enrollment of an attorney upon a finding that the attorney's conduct poses a substantial

threat of harm to the interests of the attorney's clients or to the public . . .

(e)(1) . . .

(C) After the initial time to answer has passed, a letter has been served on the member through regular mailing again warning the member of the consequences of failing to file an answer, and the member has not filed an answer within 15 days after the letter was served.

(2) The board shall terminate the involuntary inactive enrollment of a member under this subdivision when an answer to the notice is filed on behalf of the member, or when a proposed answer is filed with a request to set aside the member's default.

(3) The enrollment and termination under this subdivision are administrative in character and no hearing is required.

§ 6068 "It is the duty of an attorney to do all of the following: . . . "

I. RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA

Rule 60 (b) SERVICE OF INITIAL PLEADING.

(b) Service upon a member who is the subject of a proceeding shall be made by certified mail, return receipt requested, addressed to the member at the latest address shown on the official membership records of the State Bar.

Rule 101. NOTICE OF DISCIPLINARY CHARGES.

(b) The notice of disciplinary charges shall:

(4) Contain the following notice in prominent type:

"**NOTICE – DEFAULT PROCEDURE.** Your default may be entered for failure to file a written response to this notice of disciplinary charges within twenty (20) days after service. Your default may also be entered for failure to appear at trial.

Rule 102. MOTIONS WHICH EXTEND TIME TO FILE RESPONSE.

If, on or before the date on which a party's response must be filed, including extensions, that party files and serves a motion to dismiss under rule 262(b), (c), (d), or (e), then the party's obligation to file the response shall be postponed as follows:

(a) If the Court denies the motion or postpones its disposition until the trial on the merits, the response shall be filed and served within ten (10) days after service of the Court's order;

(b) If the motion was made under rule 262(b), the response shall be filed and served within ten (10) days after service of the initial pleading is properly made;

(c) If the motion was made under rule 262(c) and the Court directs or permits the filing of an amended initial pleading, the response shall be filed and served within ten (10 days after service of the amended initial pleading.

Rule 200. DEFAULT PROCEDURE FOR FAILURE TO FILE TIMELY RESPONSE.

(a)(4) the following in prominent type: **"YOUR DEFAULT WILL BE ENTERED IF NO RESPONSE IS FILED WITH THE CLERK OF THE STATE BAR COURT WITHIN TEN (10) DAYS OF SERVICE OF THIS MOTION FOR ENTRY OF DEFAULT.**

(b) Service of the motion for entry of default shall be as provided in the rule for service of initial pleadings (rule 60).

(c) Service of the notice of entry of default on the respondent shall be as provided in the rule for service of initial pleadings (rule 60).

Rule 203(b) Motion to Vacate Improperly Entered Default. Any party may move to vacate any default on the ground that it was not properly entered. The Court may vacate an improperly entered default on its own motion. An improperly entered default may be vacated at any time while the State Bar court has jurisdiction of the matter.

Rule 300. PETITION FOR INTERLOCUTORY REVIEW.

(c) Time for Filing Petition. Where review is provided for under paragraph (a) of this rule, any aggrieved party may petition the Review Department for review of the order within fifteen (15) days of the service of a written order by a judge of the Hearing

Department, or of the making of an oral order on the record, whichever is later.

Rule 461. APPLICATION FOR INVOLUNTARY INACTIVE ENROLLMENT.

(e) Within three (3) court days after filing the application, the deputy trial counsel shall serve on the member, pursuant to the rule for service of initial pleadings. (rule 60).

Rule 462. MEMBER'S RESPONSE TO APPLICATION; WITHIN TEN DAYS TO PROTECT RIGHT TO HEARING.

The member against whom an application or order to show cause under these rules is directed shall have ten (10) days from the date of service of the application or order to show cause to file with the Clerk a verified response and a request that the hearing which has been set pursuant to rule 461 be held.